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THE EVOLUTION OF AMERICAN CRIMINAL JURISPRUDENCE AS ILLUSTRATED BY THE CRIMINAL CODE OF PENNSYLVANIA

BY HARRY ELMER BARNES, PH.D.

I. INTRODUCTION.

THE evolution of criminal jurisprudence in modern times is one of the most interesting aspects of the development of intellectual and social history. It illustrates the changing social attitudes with respect to the control of social and anti-social behavior, and well exemplifies the changing intellectual attitudes with respect to these types of behavior that are taken into cognizance by criminal jurisprudence. In general, the evolution of criminal jurisprudence has shown a general tendency away from the close interrelation of religion and criminal jurisprudence toward a gradual secularization, the attitude toward the criminal and his treatment coming gradually to be viewed in the light of its relation to social protection and well-being.

In choosing a state whose criminal code will perhaps illustrate as well as any the evolution of American jurisprudence, Pennsylvania has been taken because of its prominence in American criminal jurisprudence and prison reform, and because it admirably exemplifies well-nigh every stage through which the development of American criminal law has passed.

II. THE CRIMINAL CODES OF COLONIAL PENNSYLVANIA.

It will be unnecessary in this place to deal in detail with the criminal code of colonial Pennsylvania before 1776, as this has been made the subject of a special study in another article.¹ We will

¹ See my article on "The Criminal Codes and Penal Institutions of Colonial Pennsylvania," in *Bulletin of the Friends' Historical Society of Philadelphia*, Vol. 11, 1922, Nos. 1 and 2.

here briefly summarize the essential facts with respect to the colonial jurisprudence of Pennsylvania. The first criminal code of Pennsylvania was that introduced in 1676, which embodied the contemporary severe English and Puritan theories and practices with respect to the treatment of crime. It provided for some eleven capital crimes, and prescribed either fines or corporal punishment for the lesser crimes and misdemeanors. In 1682, this original severe criminal code was replaced by a far different body of law, namely, the Quaker Code, which was introduced by William Penn, embodying the same unique liberality that had just previously been introduced in the Quaker criminal code of West Jersey. The Quakers were very much opposed to the shedding of blood, and, hence, there was but one capital crime provided for in the Quaker code of 1682, namely, pre-meditated murder. Another unique aspect of this Quaker criminal code of the colony of Pennsylvania was the fact that for crimes other than capital the earlier usual procedure of prescribing corporal punishment or fines was replaced by the practice of imprisonment at hard labor. This Quaker innovation of the 17th century is usually regarded by historians of criminology and penology as the first general appearance of imprisonment as a method of treating the criminal.

The Quaker criminal code of Pennsylvania was, unfortunately, short-lived. The Quakers refused to take an oath, and the British government refused, in turn, to accept the criminal code of the Quakers in Pennsylvania. Finally, in 1718 the Quakers, in order to secure the right of affirmation, instead of oath-taking, surrendered their criminal code and agreed to accept a criminal code similar in attitude and content to that of the earlier code of 1676, and based, like this earlier code, upon English attitudes and precedents. In this code of 1718 the following crimes were declared to be capital: treason, murder, man-slaughter by stabbing, serious maiming, highway robbery, burglary, arson, sodomy, buggery, rape, concealing the death of a bastard child, advising the killing of such a child, and witchcraft. Larceny was the only felony which was not made a capital crime. A generation later, counterfeiting was made a capital crime, there thus being some fourteen capital crimes in the criminal code with which Pennsylvania finished the colonial period. It was this situation which confronted the Pennsylvania legislators when the colony separated from Great Britain and set up an independent government in 1776.

III. THE REFORM OF THE CRIMINAL CODE, 1776-1829.

There were two main causes for the reform of the barbarous provincial criminal code when Pennsylvania obtained its independence. The first was the feeling that the code of 1718 was not a native colonial and national product, but that it was the work of a **foreign country**, forced upon the province by taking advantage of its early religious scruples and divisions. Especially was this the view taken by the Quaker element in Philadelphia and eastern Pennsylvania. Therefore, it was natural that a reaction against the English criminal jurisprudence should be one of the first manifestations of national spirit after 1776. The second chief cause of reform was the growth of enlightenment and criticism abroad. The movement represented by Montesquieu, Voltaire, Diderot, Beccaria, Paine, Bentham and others had affected the leaders of colonial thought in Pennsylvania to such an extent that reform would probably have been inevitable without the strong local impulses which existed at home. This background of the reform of criminal jurisprudence in Pennsylvania has been well summarized by one of the ablest contemporaries of, and participants in, the movement, William Bradford, justice of the supreme court of Pennsylvania, attorney-general of the United States and designer of the reformed Pennsylvania penal codes of 1790 to 1794. Writing in 1793, he thus explained the transformation of the criminal codes of Pennsylvania:

We perceive, by this detail,² that the severity of our criminal law is an exotic plant, and not the native growth of Pennsylvania. It has been endured, but, I believe, has never been a favorite. The religious opinions of many of our citizens were in opposition to it: and, as soon as the principles of Beccaria were disseminated, they found a soil that was prepared to receive them. During our connection with Great Britain no reform was attempted; but, as soon as we separated from her, the public sentiment disclosed itself and this benevolent undertaking was enjoined by the constitution. This was one of the first fruits of liberty and confirms the remark of Montesquieu, "That, as freedom advances, the severity of the penal law decreases."³

It was natural that when the American reaction against English jurisprudence took place in Pennsylvania, it should take the form

² This passage follows immediately after a sketch of criminal jurisprudence in provincial Pennsylvania. Bradford's death in 1795, at the age of forty, was a great blow to American jurisprudence. His achievements up to that point incline one to surmise that with anormal life he would have quite displaced Edward Livingston as the greatest of early American legists.

³ William Bradford, *An Enquiry How Far the Punishment of Death Is Necessary in Pennsylvania, With Notes and Illustrations*, Philadelphia, 1793, p. 20. References are to the London reprint of 1795.

of a return to the doctrines and practices of Penn. The new state constitution of September 28, 1776, directed a speedy reform of the criminal code along the line of substituting imprisonment for the various types of corporal punishment. It was stated that:

The penal laws as heretofore used, shall be reformed by the future legislature of the State, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes.

To deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary; houses ought to be provided for punishing by hard labor, those who shall be convicted of crimes not capital; wherein the criminals shall be employed for the benefit of the public, or for reparation of injuries done to private persons. And all persons at proper times shall be admitted to see the prisoners at their labor.⁴

The absorption of attention and energy by the military struggle with England prevented any immediate reform of the criminal code, but on September 15, 1786, an act was passed which aimed to carry out the provisions of the constitution of 1776.⁵ The juristic conceptions of the framers of the act were expressed in the following paragraph:

Whereas, it is the wish of every good government to reclaim rather than to destroy, and it being apprehended that the cause of human corruptions proceed more from the impunity of crimes than from the moderation of punishments, and it having been found by experience that the punishments directed by the laws now in force, as well for capital as for other inferior offences do not answer the principal ends of society in inflicting them, to wit, to correct and reform the offenders, and to produce such strong impression on the minds of others as to deter them from committing the like offences, which it is conceived may be better effected by continued hard labor, publicly and disgracefully imposed on persons convicted of them, not only in the manner pointed out by the convention, but in streets of cities and towns, and upon the highways of the open country and other public works. . . .⁶

It was enacted, accordingly, that every person henceforth convicted of robbery, burglary, sodomy or buggery, instead of suffering the death penalty, should forfeit all property to the state and serve a sentence of not to exceed ten years at hard labor in the jail or house of correction in the county or city where the crime was com-

⁴ *Constitution of 1776*, Chapter II, Sections 38-9.

⁵ *The Statutes at Large of Pennsylvania*, Vol. XII, p. 280.

⁶ *The Statutes at Large of Pennsylvania*, Vol. XII, pp. 280-81.

mitted.⁷ Horse stealing was penalized by full restitution to the owner, the forfeiture of an equal amount to the state and imprisonment at hard labor for a term not to exceed seven years.⁸ Simple larceny, over twenty shillings, was to be punished by full restitution, forfeiture of like amount to the state and imprisonment at hard labor for not over three years.⁹ Petty larceny, under twenty shillings, was to receive a like punishment, except that the maximum term of imprisonment was limited to one year.¹⁰ It was further decreed that a mother could be convicted of the murder of a bastard child unless it could be shown that the child was born alive.¹¹ Finally, any other crimes not capital, in the earlier code, but punishable by "burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in or upon the pillory, whipping or imprisonment for life," should thereafter be punished by imprisonment at hard labor for not more than two years.¹² In this manner there disappeared from the statute books the most brutal and revolting phases of the criminal jurisprudence and procedure of the colonial period, although the death penalty was still retained for some ten crimes.

The important act of April 5, 1790, establishing the Pennsylvania system of imprisonment in solitary confinement, while primarily a law concerned with penal administration, specified the penalties for crimes committed, but this part of the act simply repeated the specifications of the law of September 15, 1786.¹³ The act of September 23, 1791, while chiefly devoted to the details of criminal procedure,¹⁴ made some advances with respect to ameliorating the severity of the criminal code. It repealed the death penalty for witchcraft,¹⁵ and ordered that there should be no more branding, whipping or imprisonment at hard labor imposed for adultery or fornication. These crimes were to be punished by a fine of not more than fifty pounds and imprisonment for three to twelve months.¹⁶

The next great step in the progressive reform of the criminal code of Pennsylvania came in an act of April 22, 1794,¹⁷ but before analyzing the contents of this act it will be useful and interesting to

⁷ *Ibid.*, p. 281.

⁸ *Ibid.*, pp. 281-2.

⁹ *Ibid.*, p. 282.

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 283.

¹² *Ibid.*, p. 283.

¹³ *Statutes at Large*, Vol. XIII, pp. 511-15.

¹⁴ *Ibid.*, Vol. XIV, pp. 128-31.

¹⁵ *Ibid.*, p. 132.

¹⁶ *Ibid.*, pp. 133-4.

¹⁷ *Ibid.*, Vol. XV, pp. 174-181.

examine the chief doctrines of the able and influential pamphlet, published by William Bradford in 1793, on the desirability of reducing the number of capital crimes in Pennsylvania.¹⁸ This work is most important in a number of ways. In the first place, it summarizes and indicates the sources of the doctrines of the jurist who drafted the revised penal code of Pennsylvania, as passed by the legislature during the years 1786 to 1794.¹⁹ In the second place, it was very influential in bringing about the acceptance by the legislature of the law of 1794 reducing the category of capital crimes in Pennsylvania to that of murder in the first degree alone. Finally, as the product of the ablest legal mind in America at the time, it attracted wide attention at home and in Europe, and furnished the reformers with a valuable instrument for aiding in their assaults upon the old order in criminal jurisprudence.

Throughout the work, Mr. Bradford gave evidence of the fact that the works of Montesquieu, Beccaria and Blackstone were not only the chief source of his own conviction that the mitigation of the criminal laws was an indispensable and immediate necessity, but that he regarded them as the main inspiration which had produced the newer and more humane conceptions in criminal jurisprudence.²⁰ At the outset, Mr. Bradford laid down the dictum that the only object of punishment is the prevention of crime.²¹ The purpose of the death penalty, then, must be solely to prevent the person executed from the commission of another crime and to deter others from committing crime through fear of death. If these ends can be accomplished by other modes of punishment, then the death penalty is unjustifiable.²² Mr. Bradford contended that solitary confinement at hard labor would accomplish all that had been claimed for the death penalty.²³ He showed that history proves that mild penalties do not encourage the commission of crime nor severe penalties deter from criminal action. The example of Rome and England demonstrates this conclusively. Rome never imposed the death penalty except upon slaves, and yet it was much more orderly than England with its unprecedentedly long list of capital crimes.²⁴ The experience of America has been similar to that of Rome and England.²⁵

¹⁸ Bradford, *op. cit.* References, as above, to London edition of 1795.

¹⁹ The total abolition of the death penalty had been urged by Dr. Benjamin Rush in 1786-7. Roberts Vaux, *Notices*, p. 33. *A Statistical View of the Operation of the Penal Code of Pennsylvania*, 1817, pp. 3-4. *The Pennsylvania Journal of Prison Discipline and Philanthropy*, Vol. II, Number 3, pp. 205-10.

²⁰ Bradford, *op. cit.*, pp. 3, 49-80.

²¹ *Ibid.*, p. 6.

²² *Ibid.*, pp. 6-7.

²³ *Ibid.*, pp. 7-8.

²⁵ *Ibid.*, pp. 10ff.

²⁴ *Ibid.*, p. 9.

Mr. Bradford then turned to a scientific examination of the effect of the ameliorating law of September 15, 1786, in Pennsylvania, upon the commission of those crimes which were removed from the list of capital offences. He concluded that, when all disturbing influences were eliminated, the results revealed the fact that the number of commissions of these crimes was less in the six years after 1786 than in the six years previous to that time.²⁶ Mr. Bradford stated that he believed that society might safely dispense with the death penalty in the case of all crimes except premeditated murder and high treason, and it might be that, sooner or later, the progress of intelligence would be sufficient, so that capital punishment might be wholly abolished.²⁷ His conclusion is significant:

The conclusion to which we are led by this enquiry seems to be, that in all cases, except those of high treason and murder, the punishment of death may be safely abolished, and milder penalties advantageously introduced. Such a system of punishments, aided and enforced in the manner I have mentioned, will not only have an auspicious influence on the character, morals, and happiness of the people, but may hasten the period, when, in the progress of civilization, the punishment of death shall cease to be necessary; and the legislature of Pennsylvania, putting the keystone to the arch, may triumph in the completion of their benevolent work.²⁸

Mr. Bradford had the satisfaction of seeing his theories enacted into law in the act of April 22, 1794, "for the better preventing of crimes, and for abolishing the punishment of death in certain cases." It was declared that,

It is the duty of every government to endeavor to reform, rather than to exterminate offenders, and the punishment of death ought never to be inflicted where it is not absolutely necessary to the public safety.²⁹

Accordingly, it was enacted,

That no crime whatsoever, hereafter committed, except murder in the first degree, shall be punished with death in the State of Pennsylvania.³⁰

It was specified that murder in the first degree would be constituted by all premeditated murder and by all murder committed in attempting rape, arson, robbery or burglary. All other types of murder were to constitute murder in the second degree.³¹ The death penalty

²⁶ *Ibid.*, pp. 20ff.

²⁷ *Ibid.*, pp. 35ff.

²⁸ Bradford, *op. cit.*, p. 46.

²⁹ *The Statutes at Large of Pennsylvania*, Vol. XV, p. 174.

³⁰ *Ibid.*

³¹ *Ibid.*, p. 175.

for murder in the first degree was to be inflicted "by hanging by the neck."³²

In addition to this remarkable reduction of capital crimes, the act provided reduced penalties for the crimes which were eliminated from the list of those punishable by death. The following were the penalties prescribed: *murder in the second degree*, imprisonment of from five to eighteen years; *manslaughter*, imprisonment for from two to ten years, with from six to fourteen years for a second offence; *murder or concealment of the death of a bastard child*, imprisonment up to five years or a fine at the discretion of the court; *high treason*, imprisonment for from six to twelve years;³³ *arson*, imprisonment from five to twelve years; *rape*, imprisonment for from ten to twenty-one years; *malicious maiming*, imprisonment for from two to ten years and a fine up to one thousand dollars, three-fourths of which was to go to the party injured; *counterfeiting*, imprisonment from four to fifteen years and a fine up to one thousand dollars.³⁴ "Benefit of clergy" was "forever abolished."³⁵

It was provided that if a person be convicted a second time of a crime which was capital on September 15, 1786, he should be confined for life in the solitary cells of the Walnut street jail, unless the inspectors saw fit to remove him from these cells.³⁶ The only exception to this rule was in case the second offence was committed after escaping or being pardoned; in such instances the penalty for a second commission of the crime was to be imprisonment for twenty-five years.³⁷ With some minor revisions, especially in the Act of April 23, 1829, this law of 1794 remained the basis of the criminal code of Pennsylvania until the systematic revision of the code in 1860.

A slight increase in the severity of the penal code was produced by an act of April 4, 1807. The act of September 15, 1786, had decreed a punishment of not to exceed two years' imprisonment for those crimes, not capital in 1786, but which had been punished by the brutal forms of corporal punishment and by imprisonment for life. This act of April 4, 1807, raised the maximum limit for these crimes to seven years imprisonment, though it specified that this increase should not apply to bigamy, accessory after the fact in a

³² *Ibid.*, p. 180.

³³ The fact that high treason was not made a capital crime may in some degree be explained by the fact that the "Whiskey Rebellion" in Pennsylvania was at its height in 1794.

³⁴ *The Statutes at Large of Pennsylvania*, Vol. XV, pp. 175-181.

³⁵ *Ibid.*, p. 177.

³⁶ *Ibid.*, pp. 178-9.

³⁷ *Ibid.*, p. 179.

felony, or the reception of stolen goods.³⁸ From this time until the act of April 23, 1829, there were no important alterations in the criminal code of Pennsylvania.³⁹

IV. THE REVISION OF THE CRIMINAL CODE IN 1829.

A resolution of the legislature, passed March 23, 1826, directed the appointment of three commissioners to revise the criminal code of the state.⁴⁰ Charles Shaler, Edward King and T. J. Wharton were appointed to perform this important task. They laid their report before the legislature on December 20, 1827.⁴¹ The commission made no attempt at a complete new codification of the criminal law of the state, as they felt that their authorization did not extend to this limit and the time allotted was not sufficient to the completion of so extensive a task.⁴² Rather they aimed at "loping off relics of barbarism," giving a better definition of crimes and eliminating obsolete statutes.⁴³ One of the most original and valuable innovations introduced was the practice of specifying only the maximum sentence and leaving the minimum to the discretion of the court.⁴⁴ This procedure was defended with ingenuity and convincence.⁴⁵ In some cases, the commissioners thought it wise to extend the maximum, and their defence of this step is interesting as indicating that the struggle between prison reformers and the conservatism of the judiciary is not merely an incident of the present day. They stated that,

In some instances, the punishment allotted to offences, appears hardly commensurate with the specified crimes, and this, whether we consider these punishments with practical men, as a means of prevention, or consider penitentiaries with some modern theorists, as mere schools of reform.⁴⁶

On the whole, however, the revision was a work of great skill and ability and the failure of the legislature to adopt it was a severe blow to the progress of criminal jurisprudence in Pennsylvania. Not until 1860 was a criminal code provided which attained the level of excellence and modernity reached in the report of 1827. The reason

³⁸*Acts of the General Assembly of Pennsylvania, 1806-7, p. 134.*

³⁹For a list of the penal laws of Pennsylvania from 1700 to 1812, see Bioren's edition of the *Laws of the Commonwealth of Pennsylvania*, Vol. V, 1812, Index, pp. 270-72. An able revision of the penal code by Jared Ingersoll, in 1813, was rejected by the legislature.

⁴⁰*Acts of the General Assembly, 1825-6, p. 413.*

⁴¹*Report of the Commissioners on the Penal Code, 1828, p. 105.*

⁴²*Ibid.*, pp. 93-4.

⁴³*Ibid.*, pp. 94-5.

⁴⁴Report of the Commissioners on the Penal Code, pp. 98-100.

⁴⁵*Ibid.*

⁴⁶*Ibid.*, pp. 96-7.

for the failure to adopt the code is a part of the story of the struggle over penitentiary systems. The same commissioners had been directed to draw up rules for the regulation of the new state penitentiaries and they had reported in favor of the Auburn system.⁴⁷ This led to the opposition of the Philadelphia Society for Alleviating the Miseries of Public Prisons, and in the three-cornered conflict which ensued between the penal code commissioners, the commissioners charged with building the Eastern Penitentiary, and the prison society, the legislature ended by rejecting the revised penal code as well as the recommendation of the Auburn system.⁴⁸

Instead of the code recommended by the commissioners, the legislature, by an act of April 23, 1829, adopted a revision which was much less thorough and systematic than the commissioners had suggested.⁴⁹ It followed the precedent of the code of 1794 in prescribing maximum and minimum penalties for the first offence of the specified crimes, and the recommendation of the commissioners of 1827 in usually prescribing only the maximum penalty for the second conviction. On the whole, the revision, while constituting no departure in juristic doctrine from the code of 1794, did produce a considerable reduction in the length of the term of imprisonment specified for the various crimes. This was, no doubt, due to the optimism at the time with respect to the remarkable reformatory virtues of the Pennsylvania system of solitary confinement at hard labor.

In the first place, it was ordered that in all cases where imprisonment was the penalty imposed this should be carried out in solitary confinement at hard labor.⁵⁰ The following penalties were imposed for the crimes enumerated: *high treason*, for the first offence, imprisonment of from three to six years, and for the second offence, imprisonment for not to exceed ten years; *murder in the second degree*, for the first offence, imprisonment of from four to twelve years, and for the second offence, imprisonment for life; *manslaughter*, for the first offence, imprisonment of from two to six years, and for the second offence, imprisonment for from six to twelve years; *mayhem*, for the first offence, imprisonment of from one to seven years, and for the second offence, imprisonment for not to exceed fourteen years; *rape*, for the first offence, imprison-

⁴⁷ *Ibid.*, pp. 77-82.

⁴⁸ *The Pennsylvania Journal of Prison Discipline and Philanthropy*, Vol. I, Number 1, 1845, pp. 8-12.

⁴⁹ *Laws of the General Assembly, 1828-9*, pp. 341-54. This code is also reproduced in Richard Vaux's *Brief Sketch of the Eastern Penitentiary*, pp. 36-42.

⁵⁰ *Laws, 1828-9*, pp. 341-2.

ment of from two to twelve years, and for the second offence, imprisonment for life; *sodomy* and *buggery*, for the first offence, imprisonment of from one to five years, and for the second offence, imprisonment for not to exceed ten years; *kidnapping*, for the first offence, imprisonment of from five to twelve years, and for the second offence, imprisonment for twenty-one years; *arson*, for the first offence, imprisonment of from one to ten years, and for the second offence, imprisonment for not to exceed fifteen years; *burglary*, for the first offence, imprisonment of from two to ten years, and for the second offence, imprisonment for not to exceed fifteen years; *robbery*, for the first offence, imprisonment of from one to seven years, and for the second offence, imprisonment for not to exceed twelve years; *horse-stealing*, for the first offence, imprisonment of from one to four years, and for the second offence, imprisonment for not to exceed seven years; *forgery*, for the first offence, imprisonment of from one to seven years, and for the second offence, imprisonment for not to exceed ten years; *perjury*, for the first offence, imprisonment of from one to five years, and for the second offence, imprisonment for not to exceed eight years.⁵¹ It was further specified that for all crimes not enumerated the penalties should remain as prescribed in earlier laws.⁵² Such was the relatively mild penal code under which the Pennsylvania system began its complete operation, as it had made its beginnings under the codes of 1786, 1790, and 1794.⁵³

V. THE ABOLITION OF IMPRISONMENT FOR DEBT.

The failure of the penal code commissioners of 1828 to provide Pennsylvania with a relatively systematic and enlightened code of criminal jurisprudence has already been discussed. It has been shown that the recommendation of the commissioners were rejected primarily because they insisted in attaching to the revised criminal code, as a sort of a "rider," a set of provisions directing the adoption of the Auburn system of prison administration. The friends of the Pennsylvania system considered the sacrifice of the newly proposed criminal code less of an evil than the loss of their cherished penological principles and defeated the bill through lobbying with the judiciary committee of the state legislature. Not until 1860 was the ambition of the commissioners realized in the enactment of a new

⁵¹*Laws of the General Assembly, 1828-9, pp. 342-4.*

⁵²*Ibid.*, p. 345.

⁵³As the basis of a comparison, see the admirable summary of the criminal codes of the period in the *Fourth Annual Report of the Prison Discipline Society of Boston, 1829, pp. 31-54.*

criminal code. In the interval between 1828 and 1860, however, one important advance was made in the modernizing and humanizing of one phase of jurisprudence which was until relatively recent times divided between civil and criminal law, namely, imprisonment for debt.

Throughout the colonial period, many successive attempts had been made to relieve the condition of "distressed debtors," but the courts never adopted a liberal interpretation of the laws, and imprisonment for debt persisted far down into the period of the commonwealth. One of the most grievous sources of evil revealed in the Walnut street jail by the Philadelphia Society for Alleviating the Miseries of Public Prisons was the mode of treating debtors in 1787-1790, and from 1818 to 1835 a separate prison on Arch street had been set aside for the incarceration of debtors and witnesses. The first important progressive legislation in this sphere was contained in an act of April 4, 1792, which was designed to do away with the evils of the extortionate fee system which had been in vogue down to that time. This act provided that the keeper of the debtors' apartment in the Philadelphia jail was to be granted a fixed salary of five hundred dollars, which was to supersede all fees hitherto allowed to him or his subordinates.⁵⁴ The basis of a general bankruptcy act was laid by a law of April 4, 1798, which provided, "That the person of a debtor shall not be liable to imprisonment for debt, after delivering up his estate for the benefit of his creditors, unless he has been guilty of fraud or embezzlement."⁵⁵ This liberal act met the fate of its predecessors and imprisonment for debt continued with little change. The first decisive step was taken in an act of February 8, 1819, which commanded that, "No female shall be arrested or imprisoned for, or by reason of any debt contracted after the passing of this act."⁵⁶ The degree to which imprisonment for debt persisted may be seen from the fact that on June 16, 1836, a long and elaborate act was passed defining and prescribing the civil and criminal procedure in debtors' cases.⁵⁷ The final act abolishing imprisonment for debt in Pennsylvania was passed on July 12, 1842. In a most fundamental sense, this act and the many similar ones which were passed throughout the country in this same general period were, as Professor Carleton has so well shown, the product of the wave of indignation that swept over the country and demanded the abolition of this, along with the many other undemocratic fea-

⁵⁴*The Statutes at Large of Pennsylvania*, Vol. XIV, pp. 267-9.

⁵⁵*Ibid.*, Vol. XVI, pp. 98-106.

⁵⁶*Acts of the General Assembly*, 1818-19, p. 57.

⁵⁷*Laws of the General Assembly*, 1835-6, pp. 729-41.

tures of American society and politics. The movement was an incident of the development of the Jacksonian democracy and of the rise of the organization of the industrial proletariat.⁵⁸

In a more immediate sense, it was the outgrowth of a vigorous campaign of invective directed against the antiquated laws on this point by Louis Dwight in the annual reports of the Boston Prison Discipline Society, from 1830 to 1845. In no phase of prison reform was Dwight more active than in agitating for the abolition of imprisonment for debt. In Pennsylvania, his efforts were ably seconded by the Philadelphia Society for Alleviating the Miseries of Public Prisons, this being about the only field in which they could work in harmony and agreement with the leader of the Boston society. The act of 1842, which was entitled, "An Act to Abolish Imprisonment for Debt and to Punish Fraudulent Debtors," provided that:

From and after the passage of this act, no person shall be arrested or imprisoned on any civil process issuing out of any court of this commonwealth, in any suit or proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract, express or implied, or for the recovery of any damages for the non-performance of any contract, excepting in cases for contempt, to enforce civil remedies, action for fines or penalties, or on promises to marry, or moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment, in which cases the remedies shall remain as heretofore."⁵⁹

VI. THE CRIMINAL CODE OF 1860.

By 1858, the anachronisms in the existing penal code and the confusion resulting from the successive additions to the act of 1829, which had itself been little but an amendment of the codes of 1790-94, made further acquiescence in the existing penal code no longer possible, and on April 19th of that year the legislature resolved,

That the Governor of this Commonwealth be and he is hereby authorized and required to appoint, by and with the advice and consent of the Senate, three competent citizens, learned in the laws of this commonwealth, as commissioners to revise, collate and digest

⁵⁸ Frank Carleton, "The Abolition of Imprisonment for Debt in the United States," in *The Yale Review*, Vol. XVII, pp. 338-44. Cf. J. R. Commons (ed.), *A History of Labor in the United States*, Vol. I, pp. 296ff.

⁵⁹ *Laws of the General Assembly*, 1842, pp. 339ff. For complete or nearly complete lists of laws dealing with imprisonment for debt in Pennsylvania, see *The Statutes at Large*, Vol. IV, pp. 183-4, note, and G. W. Pepper and W. D. Lewis, *Digest of the Laws of Pennsylvania*, 1896, Vol. I, p. 2313. For a discussion of the abolition of debt in Pennsylvania, see W. C. Heffner, *The History of Poor Relief Legislation in Pennsylvania, 1682-1913*, pp. 202-4.

all the acts and statutes relating to or touching the penal laws of the commonwealth.⁶⁰

The commissioners appointed by Governor W. F. Packer to carry out this revision of the penal code were John C. Knox, David Webster and Edward King.⁶¹ Judge King (1794-1873) had been one of three commissioners on the revision of the penal code in 1828, and he had the opportunity to put his juristic ideas and principles into practice after an interval of thirty-two years. It is generally agreed that the code of 1860 was mainly the work of Judge King, the most eminent of Pennsylvania authorities on the law of equity and for years President Judge of the criminal court of Philadelphia county.⁶²

Apart from the specific penalties imposed by the code some of its outstanding features were the following. It was drawn up in an admirably systematic manner, even if some of the divisions may have been too logical and artificial, a fault inherent in all attempts to classify criminal acts. The two most novel and progressive features of the code were the consistent practice of prescribing only the maximum penalty for the several offences and leaving the minimum to be fixed at the discretion of the sentencing court, and the courageous abolition of the monstrous and barbarous distinction between grand and petit larceny, which still remains embalmed in the statute books of many American commonwealths—a curious but oppressive relic of medieval juristic conceptions. The only reactionary anachronism introduced was that contained in the law imposing a penalty for blasphemy. This stipulated that,

If a person shall wilfully, premeditatedly and despitefully blaspheme, or speak losely and profanely of Almighty God, Christ Jesus, the Holy Spirit, or the Scriptures of Truth, such person, on conviction thereof, shall be sentenced to pay a fine not exceeding one hundred dollars, and undergo an imprisonment not exceeding three months, or either, at the discretion of the court.⁶³

The following were the penalties imposed for the more important crimes. In the field of crimes against the state, *treason* was punished by a fine not exceeding two thousand dollars and impris-

⁶⁰ *Laws of the General Assembly*, 1860, p. 392.

⁶¹ "The Revised Penal Code of Pennsylvania," reprinted from *The American Law Register*, August, 1860, pp. 1-2.

⁶² "The Revised Penal Code of Pennsylvania," *loc. cit.*, pp. 2-3.

⁶³ *Ibid.* It is significant that down to the present time all the great revisions of Pennsylvania criminal law have been primarily the work of some one man in each epoch. The enlightened Quaker codes of the late seventeenth century were prepared by William Penn; the notorious code of 1718 was compiled by David Lloyd, though he cannot be entirely blamed for its contents; the notable revisions of 1786 to 1794 were the work of William Bradford, Jr., inspired by the spirit of Benjamin Rush; the slightly revised code of 1829 was drawn up by Thomas Bradford, Jr., with the aid and advice of Roberts Vaux and S. R. Wood.

onment for a period not to exceed twelve years. *Misprison of treason* was penalized by a fine of not to exceed one thousand dollars and imprisonment for not more than six years.⁶⁴

The following penalties were prescribed for crimes against public morals and decency: *blasphemy*, as above; *sodomy* and *buggery*, a fine not to exceed one thousand dollars and imprisonment for not more than ten years; *bigamy*, a fine of not more than one thousand dollars and imprisonment for not more than two years; *adultery*, a fine of not more than five hundred dollars and imprisonment for not more than one year; *fornication*, a fine of not more than one hundred dollars; *incest*, a fine up to five hundred dollars and imprisonment for not more than three years.⁶⁵

Crimes against persons were dealt with in the following manner: *murder in the first degree*, "death by hanging by the neck"; *murder in the second degree*, imprisonment for not more than twelve years for the first offence and life imprisonment for the second offence; *voluntary manslaughter*, a fine of not more than one thousand dollars and imprisonment for not more than twelve years; *mayhem*, a fine of not more than one thousand dollars and imprisonment for not more than five years; *rape*, a fine of not more than one thousand dollars and imprisonment for not more than fifteen years; *kidnapping*, a fine of not more than two thousand dollars and imprisonment for not more than twelve years; *assault and battery*, a fine of not more than one thousand dollars and imprisonment for not more than one year, both or either at the discretion of the court.⁶⁶

The punishments decreed for offences against personal property were as follows: *robbery*, a fine of not more than one thousand dollars and imprisonment for not more than ten years; *assault to rob*, a fine of not more than one thousand dollars and imprisonment for not more than five years; *larceny*, a fine of not more than five hundred dollars and imprisonment for not more than three years.⁶⁷

The punishment prescribed for offences against real property follow: *burglary*, a fine of not more than one thousand dollars and imprisonment for not more than ten years; *arson*, without a person in the dwelling house, a fine of not more than two thousand dollars and imprisonment for not more than five years, and with a person in the dwelling house, a fine of not more than four thousand dollars and imprisonment for not more than twenty years.⁶⁸

⁶⁴ *Ibid.*, p. 385.

⁶⁵ *Ibid.*, pp. 392-5.

⁶⁶ *Ibid.*, pp. 402-8.

⁶⁷ *Ibid.*, pp. 408-15.

⁶⁸ *Ibid.*, pp. 415-20.

Finally, with respect to offences against the coin and forgery, the following penalties were prescribed: *counterfeiting*, a fine of not more than one thousand dollars and imprisonment for not more than five years; *forgery*, the same as for counterfeiting.⁶⁹

The only capital crime, then, in the code of 1860 was murder in the first degree, as in all codes from 1794 to 1860. A revised code of criminal procedure was also prepared by the commissioners and accepted by the legislature.⁷⁰ In their long and able report the commissioners presented an elaborate exposition, explanation and defence of their work which was of great assistance in securing its enactment into law.⁷¹

That the report and the codes were considered of a high order by authoritative contemporary critics is evident from the following comment in one of the leading law reviews of the time:

The report, as a whole, is a most masterly production, and reflects infinite credit upon the ability, learning, industry, and faithfulness of the Commissioners, and will prove an enduring monument to their fame. It is deserving of careful study in all its details, not only by those who are engaged in the practice of criminal law, but by the legislator, and by all who are interested in penal legislation and the entire subject of crimes and punishments. Pennsylvania may now congratulate herself upon possessing a system of penal laws worthy of her advanced civilization, and adapted to the wants of her extended and varied population.⁷²

VII. THE CONTEMPORARY MOVEMENT FOR A SYSTEMATIC REVISION OF THE CRIMINAL CODE.

While there is little doubt that the laudatory strain in the above quotation was justified, in view of the relative condition and level of criminal jurisprudence at that time, the progress in the level of criminal law in the last half century is evident from the following incisive criticism passed upon this code of 1860 by Professor William E. Mikell, Dean of the Law School of the University of Pennsylvania, one of the most eminent of American authorities on criminal jurisprudence, in general, and on the criminal law of Pennsylvania, in particular:

⁶⁹ *Ibid.*, pp. 420-25.

⁷⁰ *Ibid.*, pp. 427-58.

⁷¹ "The Revised Penal Code of Pennsylvania," *loc. cit.*, pp. 4ff. The complete documentary sources for this revision are contained in the following: *Report of the Commissioners Appointed to Revise the Penal Code of the Commonwealth of Pennsylvania*, Harrisburg, 1860, pp. 129, and *The Penal Laws of Pennsylvania, Passed March 31, 1860*, Harrisburg, 1860, p. 79.

⁷² "The Revised Penal Code of Pennsylvania," *loc. cit.*, p. 26. For a list of the criminal laws repealed by the code of 1860, which constitutes a fair index to the previous criminal law of Pennsylvania, see *Laws of the General Assembly*, 1860, pp. 451-8.

Perhaps, in the true sense of the term, there is no criminal "code" in Pennsylvania. The whole body of criminal law has never been reduced to a written code in this state in the sense in which this has been done in some of the States of the Union in which jurisdictions there are no crimes except those specifically prescribed. . . .

Viewing the code, however, as a whole, there is an utter lack of principle in the grading of crimes as felonies or misdemeanors, either according to the moral heinousness of the offence or the severity of the punishment. . . .

The work of the commissioners who framed the Code of 1860 shows an utter lack of consistent theory not only of grading the crimes as felonies and misdemeanors, but also in grading the punishment fixed for the various crimes. . . .

In the case of almost every crime denounced by the code fine and imprisonment are associated. In most cases the penalty provided is fine and imprisonment, in some it is fine or imprisonment. In a few cases imprisonment alone without a fine is prescribed, and in a few others, it is a fine alone without imprisonment. We seek in vain for any principle on which the fine is omitted, where it is omitted; or for a principle on which it is inflicted in addition in some omitted; or for a principle on which it is inflicted in addition to imprisonment in some cases, and as an alternative to imprisonment in others. . . .

The Pennsylvania code has no general section on attempts, but in a haphazard manner, in providing for some crimes, provides for the attempt to commit the same, and in some cases has no provision for such attempts. A study of those cases in which provision for punishing the attempt is made, shows an entire absence of any theory or principle in assessing the punishment. . . .⁷³

The criminal code of 1860 has never been systematically revised and remains to the present day the basis of Pennsylvania's criminal jurisprudence. It has been modified by many additions and amendments, but these alterations have contributed rather to greater confusion than to clarity and modernity. Professor Mikell also calls attention to this point:

The writer has attempted to point out in this paper some of the more glaring and interesting defects in the code. He has by no means exhausted them. There is a great need for a complete revision of the code. It is a jumble of inconsistent theories; a great many sections are badly drawn, others are obsolete; many are inconsistent, many are in conflict; there is much overlapping due to different acts having been passed at different times covering in part the same subject matter, so that it cannot be told whether a given crime should be punished under one section or another prescribing a different punishment.⁷⁴

⁷³*The Journal of Prison Discipline and Philanthropy*, March, 1918, pp. 89-91.

By 1917 the condition of the penal code of Pennsylvania as regards anachronisms, conflicts and points of confusion had become much like that which existed in 1860, and an act of July 25, 1917, directed the governor to appoint five commissioners to

. . . revise, collate, and digest all the acts and statutes relating to or touching the penal laws of the Commonwealth in such a manner as to render the penal code of Pennsylvania more efficient, clear, and perfect, and the punishments inflicted on crimes more uniform and better adapted to the suppression of crime and the reformation of the offender.⁷⁵

Governor Brumbaugh, accordingly, appointed the commissioners and they are now engaged upon the task of revision which presents an opportunity for constructive and progressive juristic reform unequalled since the days of William Bradford, Jr., as the scientific background of criminal jurisprudence has made more progress since 1860 than it had between the time of Draco and 1860. As a member of the commission charged with the revision, Professor Mikell has given above some notion of the task and at least a slight indication of the promising spirit in which it will be attacked.⁷⁶ The commissioners appointed drafted a revised code, but the Legislature thus far (March, 1923) refused to accept their work and bring Pennsylvania criminal jurisprudence up to the level of modern juristic science and penal practice.

⁷⁴ *Ibid.*, p. 92.

⁷⁵ *Laws of the General Assembly*, 1917, pp. 1188-9.

⁷⁶ The following commissioners were appointed by Governor Brumbaugh to revise the criminal code, Edwin M. Abbott, William E. Mikell, George C. Bradshaw, Clarence E. Coughlin and Rex N. Mitchell.

THE HUMAN STRIVING AND THE CATEGORIES OF SCIENCE¹

BY BENJAMIN GINZBURG

A CERTAIN school of philosophers have tried to persuade us that the human striving, or the moral consciousness, and the principles of scientific reason have no relationship in common. It is but necessary to cast a glance at the history of pragmatism to appreciate the inadequacy of such an assertion. In the original article of C. S. Peirce on "How to Make Our Ideas Clear,"² the argument concerned the principles of scientific method. After reviewing the notions of Bacon and Descartes, as well as the attempts of lesser philosophers to legislate for science, the American mathematician came to the conclusion that it was necessary to bring reason into the laboratory—much as Kepler had done when he painstakingly plotted every possible curve that could explain the movement of Mars. From a discussion of the logic of science, pragmatism was transformed into a philosophy of voluntaristic fideism. And even if Mr. Dewey has attempted to swing the movement away from some of the temperamental excesses of James, the fact remains that in the pragmatic philosophy logic and moral striving are still very closely united.

To be sure, the realistic critics have used pragmatism as the horrible example of what happens when reasons of the heart are allowed to interfere with reasons of the intellect. And it certainly is true that pragmatism in many instances has weakened the authority of the intellect, and has opened the door to all manner of affective vagaries. The same charge is applicable to the Bergsonian philosophy of the intuition, which beginning as a critique of scientific orthodoxy has ended up as an apology for modernistic Catholicism. Granted that these movements have been to a large extent intel-

¹A critical discussion based on *L'Expérience Humaine et la Causalité Physique*, by Léon Brunschvicg. Paris, Alcan, 1922, pp. 625, xvi.

lectually destructive, the very fact that the moral consciousness can play such tricks is in itself highly significant. We must deal with the reasons of the heart if only for their power to make trouble. We cannot follow out the suggestion that Mr. Russell offers in "The Freeman's Worship," and let our heart cherish lofty thoughts with no other specific content than their mere loftiness. The heart refuses to be fooled that way.

If the moral striving cannot be permanently separated from our intellectual activity, and if the method of pragmatism and the method of the Bergsonian intuition lead only to the breakdown of intellectual authority, there is yet the method of Spinoza—the union of love and knowledge in the *amor dei intellectualis*. It is also the method of Plato and the method of Kant. All three of these philosophers educated their sensibility by a devotion to science, instead of undermining their reason by giving free rein to their sensibility. All three meditated the experience of mathematics. ". . . Truth," wrote Spinoza, "might have lain hidden from the human race through all eternity, had not Mathematics, which deals not in final causes but in the essences and properties of things, offered to men another [and veritable] norm of truth."²

What clearer illustration can be given of the gulf separating the Spinozistic norm of truth from the norm of pragmatism than to cite in this connection the lines written in 1893 by William James to his friend Flournoy?

"Pourquoi suis-je depourvu du sens mathématique. Toutes les propositions mathématiques me semblent non seulement inintelligibles, mais fausses. Renouvier m'a toujours contenté par son exposition; et voilà qu'il va falloir que je me remette à l'école."³

While these lines are not meant to be taken too seriously, they do give an *aperçu* of the motivation of the Jamesian temperament, and M. Brunschvicg is right in observing that "the *Varieties of Religious Experience* would bear quite a different interpretation the moment one understood that there exists *Varieties of Mathematical Experience*, no less fascinating and no less suggestive."⁴

For the task of interpreting the human striving in its multiple philosophic aspects, no writer could be better fitted than M. Brunschvicg. Historian of Spinoza, commentator of Pascal, equipped with the solid weapon of mathematical training as displayed in his

²"Popular Science Monthly," Dec., 1877.

³Ethics, Part I, app. Cf. Van Vloten and Land, vol. 1, p. 71.

⁴*La Vie et l'Œuvre de Théodore Flournoy*, Archives de Psychologie, 1921, p. 95.

⁵*L'Expér. Hum.*, p. xi.

Etapas de la Philosophie Mathématique, and nurtured in an intellectual atmosphere where science and philosophy have been brought more and more together—our author has used all these advantages to perform a difficult piece of work well. He has employed a method which might be characterized as historical impressionism. Certainly no method is more open to abuse than that of arriving at a point of view by reading and commenting upon history. The danger of reading into history one's own preconceptions is assuredly very great, but its magnitude is in inverse proportion to the erudition of the historian. In the case of M. Brunschvicg, while his present work, *L'Expérience Humaine et la Causalité Physique*, is not to be ranked, and is not meant to be ranked as a history, it would seem that he has lived up, as well as any man can, to the ambitious formula he himself has set for all his writing:

"Philosophy will know what men have believed, and why they have believed in it; it will say why there are certain propositions which it is absurd to maintain in this day, others which it would be no less absurd not to maintain. Philosophy will sum up the experience of thinking humanity, and this experience must be made complete by a test of truth, which will bring about discrimination between values, which will eliminate diversity and contradictions, allowing to remain only the unique truth."⁶

M. Brunschvicg's subject is at the heart of the modern philosophic problem—one might say the philosophic problem of all time. It is not merely a cold intellectual antinomy—the logical absurdity of the causal relation—that concerns us. It is the validity of science, the efficacy of human effort which are at stake. The crucial issues upon which turned the warfare between religion and science in the seventeenth century and between science and moral philosophy in the nineteenth and twentieth centuries embrace this central paradox of causality. It is easy enough to take one side or another in the battle—to be a dogmatic scientific determinist and forget the troubles of the moral life, or to believe in faith and deny the necessity of science. But even when human experience is thus artificially divided into water-tight compartments, new difficulties rise up in each section. The orthodox principles of science lead to logical contradictions at every step. And as for faith, it cannot get along by itself; it demands a concrete intellectual creed, and even apologetics must obey the rules of logical consistency.

For the solution of these multiple contradictions, there is no genuine method other than the method of science and philosophy. This

⁶*Nature et Liberté*, Paris, Flammarion, 1921, p. x.

lesson M. Brunschvicg has learned by a confrontation of the intellectual careers of Pascal and Spinoza, and it was at the conclusion of his studies on these philosophers, published in 1906, that he thus summed up the relation of reason to faith:

"Reason is not an element of a synthesis which is to be established by a compromise between reason and faith; it is the positive function of the synthesis, while the role of faith is to occupy the place of anticipation which reason is to reach, to provoke the effort which will make this reason equal to its own task."⁷

M. Brunschvicg's motive in writing his comprehensive treatise on causality is obvious to the reader who cares to look between the lines. It is to banish the ghost of scientific materialism which haunts our modern civilization. But the knowledge of this motive does not in any way diminish the philosophic value of the work—no more than a knowledge of Spinoza's psychology destroys the logical consistency of the *Ethics*.

Nearly a hundred pages are devoted to a consideration of the doctrines of pure empiricism. These theories, bobbing up now and then in the course of history, have pretended to explain the organization of experience automatically without any intellectual effort or contribution on the part of the human mind. Perhaps the most blatant exposition of empiricism is that of John Stuart Mill, who tried to derive the principles of induction by induction itself. The ancient empiricists were never so ambitious. Thus Sextus Empiricus writes in the *Adversus Mathematicos* (V, 104): "If in medicine we know that a lesion of the heart brings on death, it is not through a single observation, but because after having observed the death of Dion, we see the death of Theon, Socrates, and many others."⁸ In other words, empiricism was merely an upper limit to scepticism.

The case was different with Hume. Here we have a philosopher who oscillated between extreme scepticism and extreme credulity. After having challenged the efficacy of natural causality to such a point as to destroy all unity in experience, he good-naturedly re-established a happy ending in his philosophy by bringing in the *deus ex machina* of universal attraction or association—an extension by analogy of Newtonian gravitation. In his historical judgment on Hume, M. Brunschvicg follows the idealistic tradition according to which the Scotch philosopher is important not for himself as for his relation to Kant.

Turning to the intellectual or rationalistic organization of experiences, M. Brunschvicg discusses the various successive phases in

⁷Revue de Métaphysique et de Morale, XIV, 1906, p. 731.

⁸Cited by Brunschvicg, p. 5.

the development of the doctrine of causality. One section deals with the notions of causality among primitive peoples, and the author takes the occasion to demolish the positivistic interpretation of M. Lévy-Bruhl that the savage mentality is pre-logical. Relying upon the same documentation as the sociological school, M. Brunshvicg is able to show that what the savage mind lacks, just as what the mediaeval mind lacked when it asserted that nature abhors a vacuum, is the mathematical tool by which modern physics and the chemistry of Lavoisier have built up fixed equations to support the observations of the senses. The savage mind is then pre-scientific but not necessarily pre-logical.

It is in dealing with ancient philosophy that M. Brunshvicg's historical interpretation is put to a severe test. The responsibility for the Aristotelian finalism, which dominated the Western world for twenty centuries, is traced to the failure of Plato's mathematical philosophy. The issue of mechanism vs. finalism was already there when Aristotle came on the scene. The naturalists had developed mechanism, but this philosophy proved fruitless for the reason that the ancients lacked the instrument of calculation which alone has made modern science successful. Finalism had grown out of the practical moral philosophy. Plato saw the weakness of both alternatives, and tried to find a way out by the path that Pythagoras had traced, but, finding himself unable to render account of change and becoming by the eternal essences of either numbers or ideas, he introduces the notion of the demi-urge as the ordinator of the universe. There was nothing left for Aristotle to do, but to register the defeat of Plato, and to conciliate in eclectic fashion both finalism and mechanism.

The Cartesian revolution is hailed by the author as a triumph of mathematics over scholasticism. Its great virtue is that it geometrised physics at the same time that it reduced geometry to algebra. The essence of Cartesian rationalism is that it abandoned the search for the real causes of mechanical action but set itself the task of observing relations. This philosophic gain was compromised by the subsequent development of Newtonian physics with its action at a distance.

"The hope which after Descartes the seventeenth century had been able to form, that of finding in the mechanistic conception of the universe a definitive solution of the problem of causality, was not realized. Not only do we observe, with Leibnitz and with Newton, the return of that notion of force which seemed to have been chased out of philosophy by the discredit of the scholastic tradition,

but this revival comes about through two different ways, which lead to two notions of force, incompatible each with the other. The Leibnizian notion of active force is regarded as imaginary by the Newtonians, because it proceeds from a metaphysical speculation, the truth of which has not been submitted to a test of facts; the Newtonian or post-Newtonian notion of force is regarded as imaginary by the Leibnizians because it does not satisfy the conditions of spatial contact required by scientific comprehension. A double conflict has to be resolved by the eighteenth century: inside of rational mechanics, the conflict of mechanism and dynamism between Cartesians and Leibnizians; and on the other hand inside of dynamism, the conflict of metaphysical mathematicism and experimental mathematicism."⁹

Part of this conflict was, as we know, removed by Kant, and the doctrine of the a-priori. Without renouncing in any way the Cartesian principle that for the speculative knowledge of the universe there exists but one type of truth, that of mathematics, the Kantian criticism bridged the gap between mathematics and physics by means of the forms of the intuition. On the experimental side the problems set by the Newtonian cosmology were not really solved until the development of Einsteinian relativity. From his point of view as a critical idealist, M. Brunschvicg takes no pains to conceal the joy with which he greets the new physics. The concept of energy has long since been regarded as nothing more than a mathematical integral, and now we are able at last to reduce gravity—this occult force acting at a distance—to geometry and differential equations.

To be sure there still remain obstacles in the way of mathematical idealism as a philosophy of science. There is the obstreperous quantum theory, which challenges the hypothesis of mathematical continuity. And there is the atomic hypothesis, which after its various vicissitudes, has now gained new strength through the work of M. Jean Perrin. But even though the atom has been counted and measured, we have not yet reached the cosmological ultimate of Democritus.

"The atoms," writes M. Perrin, "are not these eternal and indivisible elements whose irreducible simplicity would set a limit to the possible, and, in their unimaginable smallness, we commence to anticipate a prodigious swarming of new worlds. Thus the astronomer, with his head growing dizzy at the sight, discovers beyond the familiar skies, beyond the abysses of shadow that light takes milleniums to traverse, pale flakes lost in space, milky ways, immeasurably distant, whose feeble glimmer yet reveals to us the palpitation

⁹*Ibid.*, p. 251.

of millions of giant stars. Nature employs the same limitless splendor both in the Atom and in the Nebulus, and every new instrument of knowledge shows her to be more vast and variegated, more fecund, more unexpected, more beautiful, more rich in its fathomless immensity."¹⁰

It is against the background of modern mathematical physics that M. Brunschvicg paints his personal philosophy. Shunning metaphysics, he is content with a philosophy of human experience, a philosophy whose sole aim is to reflect upon the progress of thought with a view to dispel prejudices and to face the future with a confidence of an understanding of the past.

"The comprehension of scientific knowledge demands an effort of reflexion upon the perspective according to which the spirit disposes both the notions which will be the instrument of its conquest and the data through which experience answers its questions, upon the manner in which the adaptation of the measure to the thing measured permits of establishing a connection and harmony between the notions of rational order and the facts of the experimental order. And we shall grasp the secret of this perspective only if we know how to plunge ourselves into the remote past of history, if we see how, by the elan of invention and by the unexpected reaction of observation, have been developed, crystalized, and then broken, the notions which serve to put the problem of the universe into equations, how the methods have been remodeled, and refined in order to give the means for perfecting endlessly the approximation of the solutions already attained."¹¹

The philosophy of M. Brunschvicg opposes itself with equal rigor both to the conceptualism of classic rationalism and to the modern anti-intellectualism. From Lachelier he has acquired the doctrine that judgment is the ultimate term of human thought, and from Emile Boutroux he has borrowed the idea of contingency in the laws of nature. Out of such elements he has constructed a two-fold philosophy of Socratic humanism in morals and mathematical determinism in the world of science. Both are possible the moment one realizes that determinism does not mean *predeterminism*, that determinism means nothing more than the act of the human mind in organizing objectively and mathematically the external world into a system.

Is this subjectivism of the type of pragmatism?

"This might be true if before perception and before the universe humanity was already something entirely given and entirely developed, in such a way that by starting with this complete notion of man and by defining the structure of his sensibility and intellect, perception and science would be explained, as *subjective syntheses*

¹⁰*Les Atomes*, Paris, Alcan, 1913, p. 291. Cf. Brunschvicg, p. 392.

¹¹*L'Exper. Hum.*, p. 570.

Now . . . if such is indeed the conception which realism forms of idealism in order to bolster up its polemic, it is far from the veritable interpretation of idealism, at least since the advent of modern psychology and critical reflexion. Man is not known before the universe; we do not know ourselves as individuals occupying a portion of space and living in time except after having organized—except through organizing—our visual and tactual impressions in such a manner as to give us a plurality of mobile objects across the succession of decorations which dominate our horizon; and we take cognizance of ourselves as being objects among objects. If we did not succeed in putting a reasonable order in the world surrounding us, we should not become ourselves, for ourselves, reasonable beings. According to the expression of Jules Lachelier: 'Incoherence outside is madness inside.'¹²

Because reason has grown out of experience and has been refined by experience gives no license to the pragmatic fallacy of regarding experience as an absolute. Brute experience is by itself a negation, a point of resistance, which becomes significant only when it is transformed into an intellectual point of departure. So, too, the moral philosophy of action which has been so largely encouraged by pragmatism reveals itself as an inadequate guide precisely because it emphasizes the wrong phase of the human dialectical process.

"The Stoics used to say that just as it often happens that a man who is introduced to another values this new friend more highly than he does the person who gave him the introduction, so in like manner it is by no means surprising that though we are first introduced to Wisdom by the primary impulses of Nature, afterwards Wisdom itself becomes dearer than are the impulses by which we came to her."¹³

As one beholds M. Brunschvicg's remarkable effort at philosophic synthesis, one begins to realize the growing complexity of modern thought, a complexity to which the doctrinaire schools of philosophy pay little heed. The problem is not so simple as realism vs. idealism, any more than the problem of political government in America is exhausted by the alternative of the Republican or Democratic parties. Nor is the practical solution of pragmatism of much use to the student who is interested in understanding reality in all its refinement and subtlety.

There is indeed no alternative than to study each phase of modern thought in its historical becoming. It is a task requiring encyclopedic knowledge and more than that, the artist's power of creative synthesis. For the philosopher, too, is an artist, having in his charge the continual remoulding of the intellectual and moral consciences of humanity.

¹²*Ibid.*, p. 610.

¹³Cicero, *De Finibus*, III, 7. Cf. Brunschvicg, p. 614.

THE MIRACLE OF THE FLOOD OF PENA BLANCA

BY GEORGE BALLARD BOWERS

THE Filipino congregation had gathered on the bank of the Pena Blanca, above the bend around the hill crowned by the ancient Catholic church. The over-zealous American had induced the new Protestants to bring for destruction their home-altar images, crude wood-carvings and several costly works of art brought from Spain centuries before.

The missionary had planned to burn the images but whispered opposition had caused him to suggest casting into the depths of the rushing river. After an hour of argument the elders accepted his compromise. With his assistance and direction, the altar-pieces were bundled, weighted, and laid ready to be pushed into the stream. After prayer and at the missionary's command, the bundles were pushed over the bank to sink into the slimy bottom.

The American assured the people that they had done right, yet they lingered as if reluctant to leave the spot. Their faces bore a look of anxiety like when awaiting an approaching typhoon. Their eyes followed the current, secretly hoping some supernatural agency might save their beloved treasures.

He urged the people to follow him to their little bamboo church where with song they would soon forget. All had started when someone turning for a final look, shouted, "Balic! Balic Balic!" As one, the crowd obeyed the summons, running back to the river's edge, the missionary following in the wake. Women shrieked and fainted. Children cried. Men shouted orders. The images cast into the water but a few moments before were floating in the whirlpool under the hill, bobbing up and down with tiny hands upstretched as if pleading for help. Before the astonished American could find his tongue, boatmen had returned the dripping figures to their respective owners. The unsuccessful effort to destroy them

was proof that the saints so grotesquely represented had interceded. The weak point of the argument did not escape the missionary, again calm and collected. He foresaw the futility of any attempt to explain how the rocky bottom had cut the bundle-bindings and the action of the current and the whirlpool under the hill. Lacking neither patience nor tact, he made no protest against the belief of the crowd but suggested a trial by fire. After a second long conference of elders, the proposal was accepted. The Filipino leader announced that inasmuch as the saints had saved the images from destruction by water, they could as easily preserve them from the flames.

The wet and bedraggled household-gods were settled upon a pile of driftwood. A blaze was started, it flickered and died. A second was kindled to be put out by dripping water. An aged woman came forward to claim her image, but an elder thrust her back. Fearing that he was about to be thwarted a second time, the missionary brought straw from a nearby stack to tuck under the pyre. The fire was rekindled. The onlookers watched with abated breath. In ten minutes there was left only a sheet of fluffy white ashes.

The old priest on the hill had heard his former flock singing while he chanted a mass to vacant benches. For thirty years he had ministered to the parish. He had supplanted the Spanish friar who had won the simple people from Saking, a priest of animism, the religion of the primitive Malay.

Protesting against Christianity, Saking fled with a few of his followers to live outlawed in the mountains. Although those he left behind were thereafter considered Christians, they frequently sought the witch-doctor's advice and assistance to appease the angry ancestral gods who appeared unable to understand that they had accepted the religion of the conqueror only because of the fear of the Spanish Guardia Civil.

When Saking heard that the American missionary taught a new religion unmolested and that the new conquerors were of many creeds, he moved his slender following nearer Pena Blanca, high on the slope overlooking the fertile valley where he had once been so prosperous.

The annual rainy season had gone to give way to summer heat. The missionary's wife had fallen ill and hurried away to Manila. The tobacco fields were yellowing while the people rested in the shade to await the harvest order.

In the early morning of the fifth from the harvest-time, Saking came down to the village. He no longer feared the priest on the

hill and the American was away. People idling in the street gathered quickly. Saking mounted the platform in front of the Chinese bakery.

"My children," he began, "thy fathers were faithful to me. Forgetting ingratitude, I come to warn of an impending danger. The Christians teach that their God once sent a flood even as once did our god Lumicao. I have come to warn that lest ye turn from the gods of the white man, the gods of our ancestors will send again a flood to destroy all who have forsaken him. Do not feel secure because the season of rain is past. Lumicao can send rain out of a clear sky. Follow me. The flood will come."

Saking had ended his tirade abruptly. Although he did not fear Father Felipe of the parish house on the hill, he deemed it wise to avoid a meeting. By the time the old priest had reached the street, the crowd had dispersed and Saking was well on his way home.

In their home, in whispers, the peasants talked of the prophesy. After the Chinaman had repeated Saking's warning, Father Felipe spat in disgust, saying, "Ca! What a fool!" then inquired the price set by the Chinese for the new tobacco crop.

The morning of the first day of harvest was cool and cloudless. The villagers had planned an early start. Someone shouted, "Silence! Listen!" The noisy crowd obeyed. From far up the valley came a roaring like a flight of locusts, then a rumbling like an approaching storm. So intent was their listening that no one had noticed the rising water of the river. The rumbling became a crackle the avalanche of water was upon them, the narrow valley had become a raging torrent destroying all in its path.

Father Felipe watched helplessly from his window while Saking looked on from the peak of Pena Blanca whose white crags had given the village and river its name.

Before sunset of that fateful May day of 1910, the Pena Blanca had returned to its banks. The fertile valley had been left as bare as if swept by fire. The tobacco fields were a sea of mud. The village was gone. The missionary's little church was gone. Nothing remained to mark the site of the once prosperous community except the big stone church and the tumble-down parish house on the hill. More than two-thirds of the village, four hundred souls, had gone to face the Supreme Being who fathers all, be they of whatever faith. As the Supreme Father gathered the lost so the whitehaired priest sheltered the living; although they had betrayed him, he shared his meager fare.

It was not until after the dead had been found, blessed, and buried that the old priest mentioned the calamity. After a mass and before dismissing his slender flock, he urged that they be not disheartened, and reminded them that God never punishes without just cause. He made no reference to his rival and the burned images; Saking, too, was beneath his notice.

The worshippers filed out, the women and children to the temporary shelters, and the men to their work. The priest watched the workers disappear in the jungle, then he walked slowly to his little home to a simple breakfast of rice and dried fish. But the men did not stop to cut bamboo, they hurried to Tugugerao the provincial capital to kill the missionary who had caused an offended God to send a flood to destroy them. Not finding their victim, the angry men returned home to find that the excitement and exposure of the flood had been too much for their beloved Father Felipe. The slender cord of life had broken, he was sleeping his last sleep.

No sooner had Father Felipe been laid to rest under the altar before which he had baptized, blessed and married so many of Pena Blanca, Saking appeared upon the scene. He reminded the remnant of the village that he had warned all of the catastrophe. He told them that he had interceded in their behalf with Lumicao but without avail. Now that the ancestral gods had wiped out the village founded by the white man, Saking proposed that they follow him to a new site beyond the mountain range where they might live and worship as did their forefathers. There being no other to give wiser counsel, the remnant of that once prosperous community followed Saking to the promised land.

A year later, the American, undaunted by the reports of the flood and the exodus of the people, returned to Pena Blanca to find that all he had read was true. After the flood a storm had blown down the little parish house and unroofed the church. Images and ornaments had been carried away or destroyed by vandals. The tropic sun had started wild flowers in the cracks around the crumbling altar.

During his enforced stay in Manila he had learned much of Oriental psychology and the folly of intolerance. He felt it his duty to go to his former followers at whatever cost. He would go to Saking as a healer and teacher rather than as a bearer of a new creed.

But, first, he must solve the mystery of the Miracle of the Flood of Pena Blanca.

Saking's village was located in a long valley running parallel to the great Cagayan of Luzon. Some prehistoric upheaval had broken the dividing range so that the valley beyond might drain through the Pena Blanca into the giant Cagayan.

The missionary decided to press eastward over the range and trust to his knowledge of Malay to save him from the wrath of Saking should he consider him an intruder.

The trail was wide and easy to the mouth of the canyon through which flowed the scanty water of the Pena Blanca. The path over the mountain looked torturous. The American decided to camp. While filling his canteen for the day, he noticed that the canyon floor was nearly level with long stretches of sand and appeared to be no more than five miles long. If a passage through were possible, a long tiresome climb might be avoided. After two hours of walking, wading, and climbing, he was through the canyon, in sight of Saking's village. The pleasure of his discovery made him forget fatigue, the Miracle of the Flood of the Pena Blanca was no longer an enigma. Before cutting into the broad trail leading into the village, he had decided not to mention his trip through the canyon.

In the trail he met some of his former converts. He judged from their greeting that they bore him no illwill. He had never opposed Saking, in fact, he had never known of him or his religion.

Saking received the visitor cordially and gave him the best hut of the village. The American found much malaria and other diseases that responded to his simple remedies. In a month his medicine supply was exhausted, he proposed that Saking furnish men to bring up more from Togugerao. On the morning of their departure, Saking warned his men to avoid the canyon from which no man had ever returned.

When the party had reached the point in the trail where the missionary had found it a month before, he ordered a halt to suggest the short cut. There was a unanimous protest, not one would risk offending the ancestral gods who guarded the canyon depths. The American explained that he had come that way, pointing to his old tracks as evidence of the truth of his assertion. As a compromise, all agreed to follow his old track, though none believed it lead through the canyon. Once within the sheer walls, all forgot their fears. Midway there was a rest after a climb over huge boulders, trees, and other debris.

One of the party called attention to the gigantic scar of the mountain side and inquired of the American where the earth and rock had gone.

"Into the river," he answered.

"But it would have filled the river," persisted the questioner.

"It did."

"When?"

"Before the flood of Pena Blanca. Yes, you see when that slice of the mountain slipped into this narrow canyon it made a dam that caused a big lake. Don't you see the dead weeds and grass in the tress high above your heads? Below there are no weeds and brush in the trees. Well, the water was that high above the dam. There," he pointed, "are parts of the dam still standing. It must have been over one hundred feet high. When it rained in the mountains, more and more water came down. In your new home the water was at least twenty feet deep. You can see that yourselves if you will look for the driftwood in the trees."

The astonished men looked at each other. All had seen the marks but no one had ever connected them with the flood. It was all clear now. They did not consider a mountain slide of the rainy season an act of a god.

"When the dry season came on in the lowland and the rains of the mountains continued, the dam grew weaker and weaker until it broke, he explained.

He had said enough. Saking's brother had suddenly grown ill and was given permission to return home. For the rest of the day the entire conversation was of the erroneous explanations of the disaster that had cost so many lives.

Malays grieve little of the past. They bore Saking no ill will. Had he not warned them? That fact alone was enough to heal any resentment.

Two weeks later when the missionary returned, he found a contrite Saking. After receiving his appointment as mayor of his community, sent by the provincial governor, Saking announced that he was ready to become a Christian and proposed that a church be built with a pulpit to be filled by their American medicine-man.

A HELPING HAND TO CHINA

BY GILBERT REID

THE above was the title in English selected for an editorial published in St. Petersburg in 1899, in expressing approval of the plan of the newly-initiated International Institute of China. This sentence expresses about as well as any other the main purpose for which this institute was started and which has directed its policy through these years.

In outlining the chief features of the "International Institute of China, I will first answer the question, "What are its chief objects?" The first object expressed in the Regulations as drawn up at the very outset in 1894, was expressed in these words: "Primarily to seek the welfare of China and the good of the Chinese people." Another form of expressing the same idea is that which is found in the above title which was used by a Russian editor. It was this feature of the new educational enterprise which especially won the favor of conservative Chinese Mandarin over two decades ago. It is on the word "primarily" that emphasis should be placed. The significance of this enterprise as started by an American and as countenanced and supported by persons of different nationalities can only be seen when there is a clash between what are regarded as Chinese interests and the interests of some other country or group of countries. For instance, when the Great War arose in Europe and when its calamities and complications spread far and wide, it was my desire that the war should not reach the shores of China and that China should not concern herself in the war in Europe as it related to strife between two groups of western nations. This desire of mine was actuated by a consideration of the best interests of the Chinese. I put forth efforts to carry out this desire. It will be easily seen that this position which I took in support of Chinese interests would bring me into conflict, not only with the position taken by the Wilson Administration, but also the position which was

held by seven Associated Powers. I might be regarded as loyal to China and I could easily be regarded as disloyal to the flag of my own country. Anyway, this is a fundamental principle which has directed the affairs of this International Institute.

A second object, indicated by the word "International," is that of cultivating friendliness between China and all other countries and to a minor degree among the peoples of these countries themselves. This means more than an American-Chinese friendship society, or an Anglo-Chinese friendship society. It means not only that the Chinese should be taught to regard Americans as friends, but also the Japanese as friends. And it also means that in the task of promoting the spirit of Internationalism Japanese and Americans or British and Germans or Russians and Japanese should attain to the high state of civilization where they will all be friends the one with the other, and all alike seeking the welfare of China. To use another word, the "Cosmopolitan" spirit is the aim of the Institute.

Closely linked with this word Inter-national is the other word Inter-religious. This is for one living in China something much more than what is expressed in the word inter-denominational. The object of the Institute has been to cultivate the spirit of friendliness between Christian adherents and those of all other faiths. This means that not only Confucianists and Buddhists should be taught to tolerate the Christian propaganda, but that Christians, both missionaries and their converts should look with respect upon those who are devoted to the teachings of the other founders of the great religions.

Another object of the Institute has been to utilize the influence of those who possess the most influence for the general good of all. It is to use the power of those who happen to be on top for the uplift of those who are beneath. It is to use the power and authority of officials for the protection and care of the people. It is to use the greater scholarship of educated men for the education and improvement of those who are illiterate and unlearned. It is to use the persuasive powers of those who are under the control of moral and religious ideas for the reformation of those who have gone astray or who spurn the laws of man and God. Hence, in starting this work in 1894, before the name, the International Institute of China, was given to it, the name used was that of The Mission Among the Higher Classes in China. This represents a new method of missionary enterprise. It has meant all along that special attention should be given to the official and educated classes in China. Latterly, it has also meant that those Chinese who are interested

in new religious movements or who are devotees of the great religions of the past should also be encouraged to unite with others in all schemes for advancing righteousness, truth and reform.

One more object has been of a very general character, namely, to engage in any form of work that would help on the cause of truth, sound learning, righteousness, peace and good will. The object is broad enough in its application to include right-minded persons of any nationality or of any religion. There is full scope for doing almost any kind of work that would be of service to one's fellowmen. With such an object the Institute can be affiliated with other Missions, with schools and universities, with social, literary and educational associations, and with the reform movements in the government of China or even among all the governments of the world.

No one can very well complain of these objects which the Institute has had in mind and to accomplish this it has undertaken a large variety of work. If there is any criticism to be passed it would be that the aims of the Institute are too general, too indefinite, or too idealistic.

I now answer the second question: "How have these aims of the International Institute been carried out?" In answer, I will follow the chronological rather than always the logical order.

When the work was inaugurated in the Autumn of 1894, during the war between China and Japan, one great feature was that of cultivating personal social acquaintance and intercourse with the Chinese of high standing. Many hours were spent in going around the city of Peking in a springless Chinese cart in order to visit the homes of the Chinese, and the higher the rank of the Chinese, the more important and also the more difficult was it to secure this acquaintance and to be admitted into the home. There are always very few who are willing to take the time or who have the inclination to make use of the method of conversation and to have the spirit of sociability in pushing forward one's ideas or even in propagating one's religion. Most missionaries prefer to remain in their study, or teach in a school, or preach in a church rather than spend hours in going around a busy city and talking on things in general. Naturally, this kind of social work is regarded as very useless. Still friends in China cannot be made otherwise. To use an American word, one needs to be a good "mixer."

When the work was initiated, coming at a critical time in the history of China, political questions had to be considered. Political activities rather than so-called religious activities were of first im-

portance. I thus drew up memorials and official documents concerning the reforms which are needed in China. Political science was not only a study but became a practical means for winning the attention and favor of those who are in the Chinese Government. One thus appeared more as a political and social reformer than as a missionary or an educationist.

Another form of work, as seen in what has just been mentioned above, has been the literary. All through these years I have not only drawn up short papers to be presented to the government, but have prepared books for the information of the educated. I have generally had the assistance of Chinese who had a good literary style so that the books would be acceptable. Latterly, I have undertaken a weekly newspaper, called the International Journal. In this we have the countenance of seven distinguished foreigners of seven nationalities who serve on the Honorary Editorial Board. The Journal aims to be constructive rather than destructive, mutually conciliatory rather than mutually antagonistic. We aim to print the news of the good things that are going on in this world, however few they seem to be as seen in the average newspaper. We are aiming through the Journal to carry out the objects of the Institute. This literary kind of work is most important, and at present the effort to issue from week to week the International Journal is something that ought to receive the countenance and still more the financial backing of friends in the home country.

For a number of years, we have carried on conferences of all religions, in which the representatives of the different religions should be invited to give addresses. We have conducted these conferences without ever quarreling with one another. The reason has been that we have had only one general rule, namely, that while each one could expound the tenets and defend the practices of his own particular religion, he should not denounce, criticize or ridicule the tenets and practices of others. These conferences have been held in many different cities. They bring together the best men in every community in the spirit of co-operation. The adherents of all religions are urged to work together for the peace and prosperity of the whole country.

Closely allied with this latter method has been the use that has been made of what may be called lecture system. When invited by the Chinese officials or by school or by any kind of association, I have always been glad to give an address on any topic that has been selected or may be deemed appropriate. For instance, during the last year I visited the Provincial capitals of seven different

Provinces at the invitation of the military or civil governor. I was entertained and full arrangements were made for a series of lectures to be given to four different groups, one the educational group, another the commercial group, a third the official group, and the fourth a group of those representing the different religions.

Something of the same character as the above has been that of giving addresses or more properly of preaching sermons to Christian churches. This may not come within the direct scope of the Institute ideas but it is a form of work which is of great service. The emphasis is laid on the most important teachings in Christianity or as found in universal truth, so as to strengthen and encourage those who have been brought into the Christian church. In this matter I never ask any questions as to what the denomination is. In fact, I have been invited by the pastors of every church in Peking except that of the Anglicans, and even in their case the bishop expressed the hope that the canons of the church would before long allow him to extend to me an invitation to preach in his cathedral.

One more form of work has been that of having a Chinese exhibit consisting of objects of interest in different parts of China. We have not dared to speak of it as a Museum, for the collection of things to be exhibited has been too insignificant. Just before the war, through a committee of twelve persons from twelve countries, a plan was drawn up for an International Exhibit. This secured the approval of the President of China, who made a promise of \$30,000.00. Owing to the havoc of war the committee has never since met, and the plan, at least for the present, has been abandoned. Still in some form or other this kind of work ought to be maintained.

One other way to reach the Chinese has been through that of a library and reading room. I trust that in the future, this may become a more important feature of our work than it has in the past.

Another question remains: "How far has the International Institute of China secured visibility or a local habitation?" During the years 1894 to 1902 the Institute, insofar as it had any habitation at all, was only in my own rented house, and even this was burned to the ground with all my property looted or destroyed during the Boxer Uprising of 1900. From 1902 to 1907 the Institute was also in rented buildings in the city of Shanghai. From 1907 down to the present the Institute has had a most valuable and central site in the French Concession of Shanghai and different buildings have been

erected thereon. The ground was purchased by the Chinese and most of the buildings have been erected by Americans and others. The property today is worth about \$150,000.00.

On my return to China in 1921, I decided that it was opportune and advisable to re-establish the Institute in Peking. The Institute, however, is again only in my own rented house. But there are plans for securing a site here and for erecting buildings to carry on the work of the Institute and especially that of the *International Journal*.

Outside of these two cities of Shanghai and Peking, we have no intention to have any local habitation. It is our desire that the ideas of the Institute will be taken up by the Chinese or by different Chinese organizations and carried out by them according to the fitness of local conditions.

One more question is this: "How has the Institute been supported?" In general, the support has come from voluntary contributions. In a business sense there have been those who have become members of the Institute, which is an incorporation, and so have paid their membership dues. In my own case, it has seldom happened that I have been guaranteed any annual salary. There have been times when friends in America have contributed large sums and some of these sums have been set apart for my own salary, for the salary for other members of the staff. It has seldom happened that any who contributed one year would promise to renew the contribution the next year. This method of carrying on work is generally regarded these days as hazardous, as not being practical or as being bad business. I know at different times men like Andrew Carnegie or John D. Rockefeller have asked the question, "What is the guarantee that the *International Institute* would be permanent?" Others have said, "When Reid has disappeared, the Institute will disappear." These all may be drawbacks. I acknowledge them. I also claim that there is a certain advantage in the way of permanent vitality by not having any endowment, although I am inclined to think that if a big endowment was offered me I would accept it. I do not know that others will care to carry on the work under these requirements of faith such as I have been ready to follow in the past.

We have a strong American committee; the Reverend Joseph Fort Newton, of New York City, being the chairman. The treasurer is Mr. George T. Pearsons, 70 Fifth Avenue, New York City, to whom any generous-minded individual who feels inclined to help may send checks. Any other information our readers may desire will be gladly given them if they write me in Peking. In any case, I trust that the work that has been here described will lead others to see that it is most important to extend to China the helping hand.

A MENACE TO CIVILIZATION

BY HAROLD BERMAN

THREE times daily, with the regularity of meals in any well-appointed household, the despairing cry goes up that "civilization is in danger" and that foundations of our social structure are about to give way, while the structure itself is ready to totter to a fall. The alarm is raised, the tocsin is sounded so that the poor inhabitants of this much-shattered earth may rush to arms and save this repeatedly-menaced civilization of ours.

When, however, we pause long enough in our tracks to seek for the cause of this threatened danger and are getting ready to resharpen our rusting bayonets, to get ready our hand-grenades, flame-throwers and tin hats so that we may, like honest and patriotic folk, rush to the defence of the thrice-daily endangered damozel, we discover that the call invariably comes from the identical quarter, though the echo reverberates far and wide afield. The French Foreign Office and Press Bureaus are evidently provided with excellent acoustics. What is euphoniously referred to as a menace really and properly means that two nations, consisting of Two Hundred Million souls, are trying desperately to get from under the crushing boot of a victor; it also means, a world in agony trying to emancipate itself from the ambition-crazed and victory-drunk autocracy formed of the Unholy Alliance between bankers and professional soldiers.

This blind and power-drunk clique, which evidently adopted the motto of the pre-revolutionary noblesse,—“After us the deluge”—is mistakenly supposed by some superficial observers to be merely the outgrowth of the abnormal experiences of the recent war, with all the harrowing Odyssey of suffering and the destruction that followed in the wake of that long-drawn-out test of endurance. The French, just now busily engaged with their brigand-errand in the Ruhr, certainly would be the very last to shatter this illusion. But this assumption, is absurd on the very face of it, and can only pro-

voke a smile from the student of French history, of French ambitions, wars, conquests and general policies.

There is no more pathetic sight than that of the undistinguished, plodding man of the every-day world who, once guided by blind destiny to some valorous deed, expects from us eternal homage, after he has sunk back into his every-day mediocrity and, mayhap, worse. Even more ludicrous is the plea of the one who demands love and homage for his all-but-worthless self as a reward for the achievements of his forefathers who have long since been gathered to the dust. On such an occasion, if we but discover the signs of misbehavior on the part of the importunate ne'er-do-well, we simply and unmistakably indicate the exhaustion of our patience with him and beg to be excused.

France had been chosen by a blind fate, in the course of a long career of autocracy and the rule of a shameless, as well as heartless, *noblesse*, to guide the other European Nations to the road of *partial* freedom. Before that eventful day there had been the great examples of the British uprising of 1648—when a kingly head fell on the scaffold—and the American Revolution. It is questionable, indeed, whether the French Revolution was due to the conscious formulation of *abstract* theories only, or whether it was mainly due to the *concrete* facts of the presence of an unlimited and utter heartlessness and lack of worldly wisdom on the part of the landed aristocracy and the governing cliques chosen from among them. For the postulate is thoroughly established that the French feudal system, surviving in its pristine glory up to the very day of the revolution, was the cruellest of all those remaining in force in the western and central parts of Europe at that day. The French peasant was the most heavily taxed—to the extent, in fact, of eighty-two per cent of his income,—the most remorselessly exploited, the most shamelessly treated and the least regarded, in a human sense, among all the peasantries of Europe.

The long reign of Louis XIV—“*la grande monarche*”—held the yet-partly conscious people together by the glamour of its glory on the many fields of battle, by the splendor of its exquisite court and its consummate and overwhelming knowledge of the weakness of the average man and his susceptibility to extraneous impressions. With the death of this consummate master of stage-craft, the undermined state of the foundations of the glamorous structure began to show plainly to the discerning eye, while it also became evident that no amount of shoring or bolstering would prolong its days. Doom was plainly and largely written on its walls by the invisible

hand of Time, and it was plain that a new structure, built on sounder foundations, must be substituted in its place. And then it was that the torrent did indeed break loose upon the nation, washing away the erstwhile oppressive *noblesse* and the landed aristocracy. That deluge to which they had frequently referred to with so much in-suisance and *sang froid* as apt to come *after* them now came before their day was done, and washed away all their iniquities in the baptismal font filled with seething human blood.

But there was, for all that, no French nation at the time, properly speaking; if we understand by the term a body of men conscious of its manhood and worth, possessing a clear conception of its desires and future needs. The masses had been far too debased for that by centuries of inhuman treatment at the hands of its many overlords. Its final outbreak simply remained one of the periodic outbreaks of one of the inanimate forces of nature—a river breaking its dam, the pent-up forces of a volcano blowing off its cone or one of the Equatorial storms breaking, in torrential destructiveness, upon a parching earth. The theorists who wished to guide this elemental force and confine it to its bank, as well as those who had prepared the soil for the coming of it—Mirabeau, Montesquieu, Rousseau, and the few others—practically all belonged to this very class of effete noblesse, and were also soon swept aside by those who had not only experienced in their soul some theoretical wrongs under the *Ancient Regime*, but had felt the *concrete* and actual sting of the lash on their own backs. And then, as we all know, the Revolution veered away from its original path and proclaimed professions and sought to engage in foreign wars, faithful to the nation's traditional love of martial glory and conquest, and thus prepared the way for the coming of the "Man on Horseback," Bonaparte.

Napoleon was the first among conquerors to realize the value to the conqueror of bringing freedom to the masses of a conquered nation. He knew well, indeed, that amongst the oppressed peoples of Europe of that day (Nationalistic theories hadn't been invented yet) there would be many who would welcome the pill of Equality and Freedom, even if tied to the sharp edge of a bayonet, and even though the latter did somewhat unpleasantly tickle their throats. He also well knew that by conferring a modicum of democracy, and the rights implied in it, on this mass, he was thus erecting a stone wall between them and their hated masters. He acted thus, most likely, from motives of enlightened self-interest, in contradistinction to his opponents who hastened to put up the bars of division, the moment the blows of Thor's hammer ceased, and thus behaved,

with the characteristic selfishness of the porker who, by driving all the smaller piglets away from the trough and swallowing all the swill, simply hastens the day of his own slaughter.

With the fall of Napoleon, there came a backsliding to the standard French misrule under the mediocrities, Louis XVIII and Louis Philippe, "the Citizen King," culminating in the ambitious and dangerous Napoleon III, together with whom Ultramontane Catholicism jumped into the saddle, and the suppression of all free thought and action in the realms of faith, politics and the economic life soon followed. It then looked as if the nation that had put so much hope into the heart of Eighteenth Century Europe, and was the first to point the path of freedom to a continent was about to perish from the earth and to slide back permanently into the arms of an effete autocracy when Blind Destiny conjured up once more one of its agents to perform the unwitting Cæsarian operation and restore to the world some of its robust common sense.

The role of Germany in modern history is a curious one. Germany is the homunculus among nations. She hardly ever *consciously* sought for freedom, if we except the brief days of the "Young Germany" movement under Jung, and least of all did seek it her forty-odd petty Kinglets and Dukelets with their Lilliputian courts and Punch-and-Judy Majesty, or Bismarck and his followers. And yet, it was the will of a capricious Fate that she, above all others, bring freedom to Europe, that she alone shall use the battering ram on the walls of the last ghetto in Europe (Rome); that she, and only she, shall be the valiant who was to level to the earth the Temporal powers of the popes and abolish forever the anomaly of a State ruled by a Church. In 1917, it was again the hammer blows of the German armies that brought the overthrow of the Russian autocracy and brought freedom to one hundred and fifty millions of men who had long sought it in vain—again a happy eventuality quite undreamt of, and most likely even unwished for, by the unwitting tools in the hands of Fate, not to speak of a free Poland, a more-or-less Independent Lithuania, and, by dragging Turkey into the War, a free Palestine. All these are achievements which were far from the minds of the German statesmen and military leaders, yet they were accomplished through their plans and prowess, while their mouths never professed democracy nor indulged in any high-sounding phrases with hollow meanings.

France, on the very contrary, ever has the slogan of her revolutionary days on her lips, yet had she never fought for freedom as such, nor was she ever instrumental in bringing it to any people dur-

ing the entire past century. France has been compared to a hysterical woman, and the symptoms of hysteria are: an exaggerated nervous tension, constant irritability and unprovoked outbursts, the sublimation of petty things into great and weighty ones; the making mountains out of mole-hills and the creating of imaginary barriers in one's path. In days gone by one afflicted with it was considered as possessed by a devil and was chained to the wall, starved and beaten. At the present day we know better. We have also grown more humane and we try to soothe the patient's nerves instead of irritating them.

Far be it from me to suggest that the antiquated method of treating this aberration is what this hysterical woman needs, though defeat—when not too crushing—is usually followed by contrition, by a searching of hearts and a general house-cleaning in national ideals as well as in national economy. In this connection let it be parenthetically remarked that, in an ethical and spiritual sense, if not in a material one, it was the *defeated nation* that won the war, and the spoils, in this case, do not belong to the victor. For, if we see general reaction, greed, cupidity and soul-destroying hatreds making their hydra-headed appearance in the lands of the victors, while crushed Germany and dismembered Austria are engaged in throwing overboard, together with their armaments, the old Imperialistic lumber and the hampering survivals of the effete Middle Ages while they are also and at the same time busily engaged in introducing new Ideals in education and the economic and social realms, then we may say that they are merely passing through the fire-test, to emerge eventually much purified from the dross that still clings to the rest of Europe.

The Jews have been a defeated people for ever so many ages. But the probability is that had they remained in undisturbed possession of their land and had no interference from any of their more powerful neighbors, they would have gradually slunk into sloth and eventually have shared the decay of all the old kingdoms and nations of their day.

After the crushing defeats of 1806 and 1807, Jung arose to lead the youth of Germany to a renewed life. He thought that the best road to a National Renaissance lay not in teaching the goose-step to the rising generation but, on the contrary, in teaching it to love *nature*, the simple life and the great outdoors. He would assemble parties of the students (*Burschenschaften*) and march to a neighboring hill where, tramping barefooted and bareheaded, singing the songs of old Germany, cooking their simple fare over a few hand-

gathered faggots and sleeping under the open blue skies, they would learn to love the soil of their fathers and become *one* with its spirit. Events proved him supremely right, so that when the test came the youth of Germany was found to be girded with the armor that cannot be penetrated with the weapons made of steel and wielded by a hand guided by hate and greed.

France at the present day *is* Europe, or at least a great portion of it, being especially predominant in the new-born States and Nations. It is by her *fat* that the most of them were created, bolstered up in the moment of their weakness, supplied with modern weapons and told to rely upon these and none other tools in the art of governing the peoples—many of them of alien blood and culture—entrusted to their tender mercies. She *is* Poland's Czecho-Slovakia's, Greater Roumania's and even Hungary's Godmother. She is indeed their "*Alter ego*" so that what they do, either of good or evil, is really her work done by proxy. She is also the mentor and guide of the Arabs in Syria and Palestine, Damascus and the Lebanon, the inspirer of the reactionary policies of their rulers as well as of the bloody vandal deeds of their masses. The "frog" in the fable was not content to croak along in his marshy pool but must needs become a bull and rule the range. The consequence was fatal injury to himself before long.

Speaking specifically, Europe's sufferings are aggravated and prolonged by France's Imperialistic ventures and megalomaniac fatuities. A small and weak Poland, unsupported by French bayonets and unbolstered by her credits, would never have perpetrated the outrages upon the helpless which have so scandalized the human race. The Arab *Fellaheen* would never have added the world "pogrom" to their meagre vocabulary, while the newly-occupied Rhineland and the Ruhr would have not awakened to the clash of arms, the Babel of quarreling voices, internal strifes and civil wars. One of the greatest tragedies in human history would have been on the high road to a permanent solution and the curtain ready to be rung down *sine die* over the stage of a nation's and a world's misery.

But hope for us, as well as for the rest of harassed humanity, lies in the unexpected *rapprochement* between Russia and Germany, the treaty recently negotiated by the two so-called outcasts who perceived that salvation for them lay in combining their paradoxical strength-in-weakness. It is once more the case of the blind man and the lame one who had been left to guard an orchard, the owner thereof feeling certain that neither one of them would be able to climb the trees and eat of their fruit. But what did they do? The

blind man climbed upon the shoulders of his lame colleague and by the aid of the latter's directions, helped himself and his friend to the most luscious specimens in the garden. Even so will it be in this instance. These two despised ones among the nations will now be enabled to get some of the fruits from the Tree of Life, the one climbing upon the back of the other and ultimately will force their seemingly virtuous adversaries to share their all with them.

There is reason to believe that England, while pretending to be surprised as well as shocked by this supposed act of "perfidy," is really secretly gratified at the result achieved, as this Alliance will undoubtedly tend to weaken her former Ally and present-day adversary and thus restore a much-needed balance to the chaotic affairs of the World. And gossip does indeed connect her Statesmen with this coup in numerous ways.

Should this treaty of amity and concord between Russia and Germany be allowed to stand—and it will, by all present indications—there will be a check given to the cause of Reaction in the entire world. France will find herself isolated, her orders, based on brute strength only, defied by her erstwhile vassals, and will also find herself deserted by America, who is even now being drawn ever tighter into the clasp of the British nation. She will then find herself forced by inexorable circumstance to reduce her armies, remove her strangle hold from the throat of the conquered, withdraw her support from Hungary and Poland, loosen her grip upon the Arabs and will eventually become the boaster of a Pyrrhic victory—illusory and unsubstantial—while her great edifice of world-hegemony, reared by aid of the bayonet and civic reaction, will vanish, as but another of the evil dreams, from humanity's consciousness!

SOVEREIGNTY

BY SMITH W. CARPENTER

THE rightful authority of man over man is founded upon the authority of man over self. Nature's god has given to everything that has life, whether vegetable or animal, the right to protect and sustain that life. We recognize the existence of this right everywhere, from the worm that turns to the axiom that makes every man's house his castle. That right was given in no meager dole, no right to a mere existence, but to life abundant such as is implied in the phrase, life, liberty and the pursuit of happiness. This right involves the dignity of life in general, and of manhood as the highest expression of life. This gift of a gracious God we style Individual Authority, or, in its loftier phases, Personal Sovereignty. The existence of such an authority is so self-evident that argument could add naught to bare enunciation.

In the light of that postulate let us inquire, whence comes the authority expressed in modern government? To all who read that question will instantly spring the answer, "All governments derive their just powers from the consent of the governed." With due reservation for the policing of the dark corners of the world, we may safely affirm that no great principle was ever more truly or more clearly stated. Yet when those very men who risked their lives to give expression to that idea came to form their government, they were strangely confused in their concept of the origin of the just powers of government.

A government by the consent of the governed had been enjoyed by the New England colonists from the very first, and by all the others in a marked, although less degree. Indeed, the great classical example, showing how human institutions crystalize when men of intelligence are cut off from superior constraining force, is the founding of New England. That they were so cut off was largely due to the general loss of interest in America; a result which naturally flowed from so many dashed hopes. The Mayflower venture seemed of so little promise to King James that he refused to take

the trouble to grant a charter. Rather petulantly he said to go ahead; if they behaved themselves they would be let alone.

In retrospect that royal word assumed something of the guise of a Magna Charta of America. All the organic union that ever existed between Plymouth and the mother country rested upon it. As soon as the colonists were able they got a patent for their land, but of governing authority it contained none. Thus established, Plymouth Colony flourished until it was united with Massachusetts under the charter of 1691, granted by Charles II. Indeed, that spoken word may be called the genius of America; all that any subsequently granted charter amounted to was to give formal, although diluted expression to that idea. When British meddlings interfered with that go-ahead-and-mind-your-own-business principle, they were largely nullified by the dogged resistance of the colonists.

The first step taken toward self-government was a momentous one, brought about suddenly through the disaffection of some of their number. With the Pilgrims were some, denominated strangers, who were of a wild and riotous disposition. When it was determined to land on the New England coast, and thus to effect their settlement outside the bounds of Virginia, some of these strangers planned to make use of the lawless license that would accrue beyond the bounds of legal jurisdiction. The need of meeting that situation awoke the memory of those free assemblages that had been the glory of their Anglo-Saxon forefathers; so that ancient institution they gave a new birth in the Mayflower Compact.

The point of departure for the study of American constitutional history is the signing of that compact. Whence did they derive the authority for that act? It implied no renunciation of citizenship or qualification of allegiance; the language used consecrated them to the service of their king no less strongly than to the service of their God. Assuredly the right—privilege it was then esteemed—of self-government could not be read out of that verbal promise that they should be let alone if they behaved themselves, when one considers the technicality with which the courts surrounded such matters. No, I quite agree with you, they needed no authority for so simple and obvious a necessity; but that does not dismiss the question, for in the highest and most solemn sense that compact implied authority; whose was it, and whence did it come? There is nothing in the historical evidences to show, nor would a direct declaration by the signers be conclusive; it is a philosophical question, such as can never be determined beyond review. Manifestly they drew their authority from the pure, serene source of all authority; from

the unquenchable fount implanted by Almighty God in their own breasts.

What was the nature and significance of their act? It was a co-ordinating of their otherwise antagonistic individual authorities; it was a formal declaration of the implied social compact; it was the surrender of the right of each to be a law unto himself, and it effected just what it declared, a civil body politic. But it was more than that. When those free men, out from under the control or jurisdiction of any civil government, afloat on the Atlantic, assembled, deliberated, and agreed to pool their divergent individual authorities into one harmonious whole, they arose to a height unattainable by separate action. It was a supreme act. Authority becomes a word unworthy to describe an act of such dignity. It was a sovereign act. They achieved a federation of sovereign manhood. The government which they there instituted, despite its subordinate relation to the British crown, was a sovereign government, deriving its just powers from the consent of the governed. In the action then taken, and in the subsequent conduct of affairs in pursuance of that self-granted charter, they were unconditioned and unconstrained by any superior power.

Obviously, we are giving a slightly unconventional twist to the word sovereignty. What is sovereignty? The word is a literary survival; it was coined to express the highest functions of autocratic potentates; it comes from a day that knew naught of the manhood-source of authority; from a day when rulers were deified. It expresses an authority transcendent, a quality of authority the concept of which has passed from the minds of men save as some of its aura still clings to the word. Yet we of today make familiar use of the term without redefining it. We could not retain the name of an extinct species, the dodo for instance, without definitely applying it to something else; and we should know all about such a change, just as we know that the new *Maine* is not the "*Maine*" that lies at the bottom of Havana harbor. But sovereignty is the name of an idea instead of an object, and ideas are never so distinct to us as objects; we therefore suffer the idea to become obscure, indefinite, and esoteric; meanwhile, we retain the name in our familiar chatter, just as though it conveyed a definite meaning. For the purpose of this confab, at least, let us seek to determine what logical significance the name may have for this democratic age.

We define it thus: Sovereignty is that supreme governmental authority which is expressed by the majority will of the people.

It will be noted that two factors enter into this definition: the limitation to supreme expressions of authority serves to conserve the odor of sanctity with which history and tradition clothe it. The limitation to expressions of the popular will is also radically conservative. Sovereignty was and still is the attribute of royalty. The people is king. We but acknowledge historical fact in recognizing the mantle of authority where, in truth, it has always been, on the shoulders of the people. Since the people never lack the will, although they often lack the wisdom, to serve their own true interests, a presumption in favor of ethical sanction now attaches more strongly than before. Supreme governmental authority exercised otherwise than in accord with the popular will is an usurped and spurious authority which can never be sovereign.

A sovereign act, according to the authorities, is one of a catalog of acts of supreme dignity, such as the making of treaties, declaring war, coining money, or maintaining an army, when such act is performed by a sovereign person. To go back far enough, anybody who could perform such an act and get away with it was sovereign; but time breeds custom, and the tendency of custom is always to favor ideas of legitimacy. That is why, in what we call monarchical times, a sovereign act required a sovereign personage for its performance.

Who then is sovereign now in America? To pass for the moment the orthodox answer, we can make but one reply: Man, the prince of the House of Nature, the very son of God Himself, He alone is sovereign. We found Him individually possessed of a modicum of personal authority; we have seen Him join with His fellows to give co-ordinated expression to that authority; man the individual in body politic does not surrender his personal authority nor transfer it to the assemblage; he but co-ordinates the expression of his authority; the element of authority itself is inalienable. Bodies-politic are but vehicles of harmonious expression; they speak with the authority of their individual membership.

The government of Plymouth Colony, instituted under the Mayflower Compact, differed neither in source nor character of authority from the majority of the town governments set up in New England. Many of the towns were organized on shipboard, or at meetings before embarking. Of course, the place of organizing is of no consequence save as it tends to show the presence or absence of outside influences which might have a bearing upon the source of authority. Especially parallel with Plymouth in the absence of any shadow of British derived authority were the original govern-

ments set up at New Haven, Windsor, Wethersfield, Newport, and Hartford; although, unlike Plymouth, they obtained charters within a few years. Meanwhile, the towns of Windsor, Weathersfield, and Hartford united under that most notable document known as the Fundamental Orders of Connecticut, than which history affords no more worthy example of independent, self-constituted government, unless it be the New England Confederation of Colonies, which was established in 1648.

Of course, the orthodox view is that all the governing authority there ever was in colonial America was derived either directly from royal charters, or mediately from the grants of chartered companies: but of sovereignty there was none. The king was the sole fountain of sovereignty and of authority. He obtained plenary sovereignty from Almighty God by virtue of a crown placed upon his head by a bishop of the Church of England. That sovereignty, so investured, was made to apply to the American continent by virtue of sundry explorations made by subjects of the English king, and confirmed to him, to the exclusion of like pretenses of other kings, by the might of English arms. There are authorities so strict as to even deny any legitimate authority whatsoever to America. According to this legitimatist school, sovereignty, springing from God Himself, flows down from its heavenly source, and can only be exercised by the Lord's anointed. Similarly its attenuated counterpart, governing authority, flows only down, although it may be exercised under charter or commission, but it is as impossible to flow up—from the states to the national government, for instance—as for a stream to flow up a mountain. Generally, however, it is held that sovereignty vested, as the result of a successful rebellion, in the states, and was by them shared with the federal government, and confirmed to that government by the treaty of peace signed by King George.

Such is the doctrine that the learned doctors of law seriously propound to Americans. "Lord, Mariar, there haint no such beast!" Yet such was the mystical, hocus-pocus sort of sovereignty that ruled the minds of the Fathers, and of their children unto this present generation. That is the doctrine that you, the reader, have been taught, not baldly but in substance. Upon that ancient abomination is founded our whole system of jurisprudence. Our states and the nation stand *in loco regis* as original sources of authority. Local government can only exist by kind permission of an over-lord.

Vastly different is that from the practice of colonial days. Forget the doctrines they then held; remember what they actually did: groups of settlers without a vestige of authority derived from law

or charter could and did organize local governments having unquestioned jurisdiction over local affairs. Call it what you please, the element of authority was not lacking. They had no trouble over jurisdiction, nature took care of that. The general colonial governments felt no license to meddle with local matters where they were being looked after by local authorities; their concern was only for matters of general interest; but it was for them, as the greater body, to define the bounds of their jurisdiction, and to standardize town procedure where it was necessary. What the whole should establish was not for a part to question. Virtually, it was parallel with the relations now existing between the states and the nation although the towns had no such protection of their rights as the constitution affords the states.

The old colonial institutions were wonderfully close to the people; the towns elected the members of one house, and the people at large elected the members of the other. When, in time, the two houses came to be designated as upper and lower, it was the popularly elected branch that was made the upper house. Yet, when those sturdy patriots, nurtured in that sort of atmosphere, and familiar with that sort of institutions, came to organize a government totally their own, they reversed everything. Why? Because they were obsessed by that false concept of sovereignty. That precious jewel, which had been their birthright for a century and a half, they were unable to recognize when adverse claims had been released. It was that mystical, hocus-pocus element for which they esteemed their existing institutions to afford no fit abiding place; it must be fittingly housed apart and away from the vulgar herd; so the senate was created an aristocratic body, elected by the states; the selection of a president was entrusted to an electoral college, and local sovereignty was wiped off the map.

What a travesty that our cities, towns, and counties are so feeble! It is not that the people as a whole feel that they, themselves, lack the wisdom or the virtue to exercise original jurisdiction over their own local affairs; it is because they are dyed-in-the-wool votaries of that ancient infamy that holds their government to be the bastard of the Lords' anointed.

THE COSMIC FIVE, SEVEN AND TWELVE

BY LAWRENCE PARMLY BROWN

II

NUMEROUS groups of twelve divine or human figures, mythical and historical, are connected directly or indirectly with the twelve months of the year or the corresponding signs of the zodiac, or with the twelve divisions of various countries recognized as terrestrial counterparts of the twelvefold celestial region. The lunar division of the year into twelve months was certainly known long before the solar zodiac, and of course the calendar months were always of more popular utility than the zodiac: whence in the most ancient mythologies that have come down to us the twelve gods belong to the months.

According to the *Rigveda*, the Brahmins had "always observed the order of the gods as they are to be worshipped in the twelve months" (VII, 103), and the gods of the months comprise six pairs of twins (for six seasons), together with one who was "single-born," for the intercalary month (*Ibid.*, I, 165, 155. The Vedic names of the twelve months appear in pairs, male and female, in the *Vishnu Purana*, where we also find their later Hindu names, not in pairs (II, 7 and 8). The Vedic five sons of Aditi become twelve in the *Puranas* and the *Mahabharata*, the latter stating that Prajapati divides himself into twelve parts, thus becoming the twelve Adityas as gods of the months ("Vana Parva," V, 189). The later Hindus recognized divinities of the hours, days, months, years and cycles of years (*Surya Siddhanta*, XII, 6, etc.), and after they had adopted the Babylonio-Greek zodiac (time of Alexander), some of their gods were associated with the signs, as in the *Mahabharata* and the *Ramayana*. The signs are also intimately connected with the mythical history of Buddha (see Lillie, *Buddhism in Christendom*, pp. 119, 120, 327, etc.) Sometimes twelve, sometimes ten subordinate Buddhas

are figured around the Great Buddha (Gautama), and again the twelve Buddhas are represented by the twelve "aeons" at the twelve points of the compass (Lillie, *op. cit.*, pp. 138, 213). The Magars had twelve tribes (Latham, *Descript. Ethnol.*, I, p. 475), as did the Santals (Lillie, *Inf. Buddhism*, p. 17); the Mogul Empire comprised twelve chief divisions (*Aycen Akbery*, II, p. 1), and the Tibetans divided the known world into twelve parts (Georgius, *Alphabet. Tibet.*, p. 472).

The ancient Iranians recognized twelve chief divinities in two groups of six each (as if for summer and winter), respectively assigned to the good Auharmazd (or Oromazes) and the evil Aharman (or Ariman) (*Bundahish*, I, 26, 27; XXX, 29; Plutarch, *De Isid.*, 47), and the zodiac signs were the leaders of the hosts of Auharmazd (*Bund.*, II., 4). Persia was divided into twelve parts (Xenophon, *Cyropaed.*, I, 2, 4; *Inst.*, IV., 7), and groups of twelve were not uncommon among the Persians, who employed a jury of twelve men (Herod. III, 35).

The twelve Aesir or chief gods of Norse mythology appear in pairs in the *Elder Edda* (I, 20), while the supreme god, Odin, has twelve names (I, 13), probably one for each month—indeed, Finn Magnusen in his *Specimen Calendarii Gentilis* has attempted to restore these twelve names to the signs, and his editor does likewise with the twelve Aesir (*Mytholog. Lcx.*, pp. 772-850, cf. 739). The Scandinavians employed the jury of twelve men which has descended to us (Mallet, *North. Antiq.*, p. 291).

The ancient Egyptians of different periods and localities allotted variant groups of twelve gods to the months (Herod. II, 14, 82; Kircher, *Oed. Aegypt.*, I, Pt. II, pp. 160, 206, 207, 265; Brugsch, *Thesaur.*, p. 472, and *Materiaux du Calend.*, p. 53; Rawlinson, *Rel. Anc. World*, 11). As early as the Pyramid texts, we find a "great company" of twelve gods (Pepi II, 659; Unas, 253b), and groups of twelve are not uncommon in Egyptian mythology, although the earlier Egyptians knew nothing of the zodiac. According to Herodotus, Egypt was divided at any early date into twelve parts, ruled by the twelve kings who built the labyrinth (II, 147; cf. Diodorus, I, 5); but in later times there were thirty-six nomes, corresponding to the ruling houses of the heaven (i. e., to the twelve signs and their twenty-four paranatellons—Strabo, XVII, 1, 3; Brugsch, *Hist. Eg.*, I, p. 21), while forty-two nomes appear on monuments of the Ptolemaic period (Brugsch, *loc. cit.*), probably being represented by what Pliny calls "the forty statues of Nemesis," in the labyrinth (XXXVI, 19).

It is probable that the Etruscans had a group of twelve chief gods, six males and six females (see Seneca, *Nat. Quaest.* II, 41; Varro, *De Re Rust.* I, 1; Arnobius, *Adv. Gent.* III, 40). Ancient Etruria was divided into three states, each of twelve tribes (Strabo, V, 2, 2; Dennis, *Cities and Cemeteries of Etruria.* I, p. xxix.), and according to Livy, the Etruria of his time comprised twelve states (IV, 23), the king being attended by twelve lictors, one from each state (I, 8), while the same number of lictors attended the Roman consuls (Ovid., *Ex Ponto*, IV, *Ep.* IX, 4).

The Babylonians and Assyrians had twelve chief gods, whose names appear on the obelisk of Shalmaneser II—including at least three of the five planetary gods, together with the sun and moon (*Records of the Past, New Series*, IV, p. 39). Diodorus says these twelve gods were allotted to the twelve months and zodiac signs (II, 30), and that with the signs were mapped twenty-four stars (and constellations), twelve to the north and twelve to the south (II, 31); the names of these twelve signs and their twenty-four paratellons being restored by Robert Brown in his *Primitive Constellations*, Vol. II). Like the sun-god, Marduk (Jupiter) has twelve names in the twelve months on a Babylonian tablet (*West. As. Inscript.* III, 53, 2; Sayce, in *Trans. Soc. Bib. Arch.* III, p. 166). In the Babylonio-Assyrian calendar each month is dedicated to a deity or deities (*Records of the Past*, I, pp. 164, 165; Jastrow, *Rel. Bab. and Ass.*, p. 463; Sayce, *Trans. Soc. Bib. Arch.* III, pp. 161-166). The Babylonian Izdubar Epic, written on twelve tablets, certainly relates to the exploits of the sun-god in his passage through the signs and the months (Jastrow, *op. cit.*, p. 484; Sayce, *op. cit.*, p. 431). Babylonia was divided into twelve states or tribes to which twelve gods were allotted (Maspero, *Dawn*, pp. 648, 670), and the Babylonians assigned twelve countries to the months of the year (Jastrow, in *Am. Journ. Sem. Lang. and Lit.* XXVI, pp. 152, 153). In the tablet entitled The Conflict of Bel and the Dragon (Tiamat), eleven tribes appear as followers of Bel, while the twelfth is the rebellious tribe (*Records*, IX, pp. 135-140); and in the Assyrian Epic of Creation the twelve tribes (probably as belonging to the zodiac signs) appear to be represented by Tiamat and her eleven offspring, who are overcome by Marduk or Bel (*Records, New Series*, I, p. 133, sq.). We shall find that this Tiamat or rebellious tribe is represented in one view by Judas Iscariot.

The Phoenicians probably recognized twelve chief deities, who became the Titans of the Greeks—the six sons and six daughters of Ouranos (Heaven) and Ge (Earth). Hesiod mentions only five

of the sons in his account of the birth of the Titans, as if they had originally been planetary (*Theog.*, 214-221); but he shortly introduces Kronos as the youngest son (264). According to Pliny, there were twelve chief cities in Phoenicia, doubtless the capitals of as many states (*H. N.*, V, 17). The twelve Labors of Herackles were probably of Phoenician origin, and with equal probability related to the course of the sun-god through the months and signs (see Dupuis, *Origine de tous le Cultes*, pp. 105-107, etc.), while the adventures of Theseus appear to be mere variants of those of Herackles. There were twelve great events in the life of Mithra, as figured on the monuments, and his devotees were divided into twelve symbolical "degrees" (Porphyry, *De Abstin.* IV, 16; Lajard, *Recherches*, p. 132 sq.). The six exploits of the solar Samson in Judges perhaps belong to the six double months, for there are six "servitudes" connected with the twelve Judges, and the Babylonians and Assyrians sometimes called the stars and constellations "judges" (*Records*, XI, p. 4).

The twelve "great gods" of Greece were recognized from the earliest historical times (*Homeric Hymn in Herm.*, 128, 129; Herod. II, 4, 7, 43; VI, 108; Thucyd. VI, 54; Pausan. I, 3, 2; 40, 2; VIII, 25, 3, etc.). At Olympia there were six "twin altars" (Apollod. II, 7, 2), probably for the deities of the double months (and signs), and if we can accept the accounts that have come down to us, they included Kronos and Rhea, Dionysius and the Graces, and Alphaeus, together with seven of the "great gods" as generally received (Pausan. V, 14, 5, 6, 8; 24, 1; *Schol. ad. Pind. Ol.* V, 8). The generally received group, in male and female couples, is as follows: Zeus and Hera, Poseidon and Demeter, Apollo and Artemis, Hephaestos and Athene, Ares and Aphrodite, Hermes and Hestia (probably allotted to the signs in the order of Leo, Virgo, etc.). They appear as above on the base of a Greek tripod supposed to be a replica of an Athenian original of the time of the Peisistratidae, *circ.* 500 B.C. (De Clarac, *Musée*, II, Plates 173, 174; Guignaut, *Recueil*, Plates LVI, LXIV, LXVI); and the same six couples in the same order probably appeared on the base of the celebrated statue of Zeus at Olympia (see Pausan. V, 11, 3, where some of the identifications are doubtless erroneous). They are also found in a circle, but not in couples and apparently in utter disorder, on the top of a marble cylinder, around the trunk of which are the signs (De Clarac, *op. cit.*, II, Plates 171, 258; Guignaut, *op. cit.*, Plate LXVII); and the same "great gods," in still different orders of arrangements are named by Apollonius Rhodius (*lib.* II—*circ.* 250 B.C.), and in some verses by an un-

known Greek poet, by the latter of whom the first six deities are properly paired, as above (in Robinson, *Archaeol. Graec.*, p. 186). The generally received catalog includes six of the seven planetary deities, omitting Kronos-Saturn, and five of the six children of Kronos and Rhea (Hesiod, *Theog.*, 452), omitting Hades. Zeus belongs to both of these smaller groups, which thus include only ten deities; the two others of the twelve being Athene (Pallas-Minerva) and Hephaestos (Vulcan—instead of Hades among the children of Kronos and Rhea), while the planetary Kronos appears not to have been included because he was the father of Rhea's children. The Latin names of the twelve "great gods" of Greece, with the six females preceding the six males, are given by Ennius (in Apuleius, *De Deo Socrat.*, frag. 45, ed. Vahlen), followed by Varro (*De Re Rust.* I, 1). Manilius (*Astron.*, II, 26) has the same deities definitely connected with the zodiac, the male and female couples being allotted to opposite signs, as follows: Minerva (Aries), Venus (Taurus), Apollo (Gemini), Mercury (Cancer), Jupiter (Leo), Ceres (Virgo), Vulcan (Libra), Mars (Scorpio), Diana (Sagittarius), Vesta (Capricornus), Juno (Aquarius), Neptune (Pisces). And they are found in the same order in connection with the signs and the months on a Roman monument (*De Clarac.* Plate 171, no. 19; *Guinginaut*, Plate LXVIII, fig. 252).

The twelve-fold territorial division was employed in various parts of ancient Greece. Attica is said to have consisted at first of four demes, and later of twelve, each of which was named from a hero and ruled by a capital city (Strabo, IX, 1, 6 and 20; Thucid., II, 15; Plut., *Demet.* 10; cf. the twelve sons of Neleus, Hom., II, XI, 692, whose descendants settled at Athens, Pausan., II, 18, 7). There were twelve Aelonian cities (and states) in Asia Minor (Herod. I, 149; Pausan. VII, 5, 1). There were also twelve Ionian cities in Asia Minor, and twelve in the Peloponnessus, which was similarly divided into twelve states by the Achaeans (Herod. I, 142, 145; Strabo, VIII, 7, 1; XIV, 1, 3, 4, 20; Pausan. VII, 6, 1). Again, it is said there were originally twelve Cyclades (Aeschin., *De Fals. Leg.* 122; Strabo X, 5, 3): twelve tribes of Elis (Pausan. V, 9, 5) and twelve of ancient Galatia, with three chief divisions of four tribes each (Strabo, XII, 5, 1). Still again, there were probably twelve tribes of the Troad originally, for Scymmus of Chios counted fifteen—twelve barbarian (the original group) and three Greek (Strabo, XIV, 5, 23).

Of the tribal divisions of ancient Arabia, one group is represented by the thirteen sons of Joktan—the thirteenth for the inter-

calary month (Gen. x. 26-29; cf. Strabo, XVI. 4, 2 and 25); while the twelve sons of Ishmael represents another (Gen. xxiv. 13-18; cf. xvii. 20 and Strabo, XVI. 4, 21—one of these sons being Nebaioth—the Nabataeans, who worshipped the sun and ate their meals in companies of thirteen, according to Strabo, XVI. 4, 27). In the Old Testament we also find the twelve sons (=tribes) of Nahor (Gen. xxii. 20-24, referring to an unidentified territory); the twelve (tribal) chiefs of Esau (Gen. xxxvi. 40-43; cf. xv. 15-19 and 1 Chron. i. 51—referring to Edom); the eleven (for twelve) sons (=tribes of Canaan (Gen. x. 15-19; 1 Chron. i. 13-16—referring to pre-Israelite Palestine, the last nine in the extant catalog being divided into three groups of three each, indicating an original catalog of four times three), and the twelve sons of Jacob (Israel) as the eponymous chiefs (Patriarchs) of the twelve tribes of Israel (Gen. xxix.-xxx., etc., with a score of catalogs of the names in various orders of arrangement), while Jacob-Israel is the twelfth in descent from Noah (Gen. xi., xii., xxv.). In Gen. xxx., 21, Dinah is found in connection with her six brothers and six half brothers, apparently as a figure of Virgo (and Venus—see above), with Simeon and Levi perhaps originally coupled for Gemini (as in Gen. xlix. 5-7). In some of the catalogs, Levi, the priestly tribe, is omitted, and Ephraim and Manasseh appear instead of the earlier Joseph thus keeping the number at twelve. It is certain that Israel never included twelve tribes at the same time, and equally certain that the tribal names are not zodiacal in origin. But the twelve sons of Jacob-Israel are obviously associated with the signs in Joseph's two dreams of his brothers and himself (Gen. xxxvii. 5-9); in the latter of which he saw the sun and moon, for his father and mother, and eleven stars (=constellations) for his brothers, as is recognized by Philo (*De Somn.* II, 11, 16) and Josephus (*Antiq.* II, 2, 3; cf. Rev. xii. 1); while in the former dream appeared twelve sheaves of straw, as probably suggested by the Syrian "Path of Straw" for the zodiac. It was at Gilgal (=Circle) that Joshua had twelve men, one from each tribe, set up as many memorial stones, probably in a sacred (zodiacal) circle (Josh. iv. 9), and the twelve tribes were also represented by twelve pillars (Ex. xxiv. 4) and twelve rods (Numb. xvii. 2). Again, the whole territory of Israel was probably symbolized originally by the concubine of a certain Levite; slain by him; cut into twelve pieces, "and sent into all the coasts of Israel"—i. e., a piece to each tribe (Judges xix. 28). In like manner, the Egyptian great serpent Apap, as a symbol of the night sky or zodiac band, was said to have been cut up into animals (Birch,

Note to Wilkinson's *Anc. Eg.* III, p. 254), and Plutarch tells us that many pretended that the soul of Typhon was divided among the sacred animals (*De Isid.* 73).

The twelve precious stones on the highpriest's breastplate, in four rows of three each, were severally engraved with the names of the sons or tribes of Israel (Ex. xxviii. 15-21; xxxix. 8-14), while the two stones on the shoulders of the highpriest's ephod bore the same names, six on each stone (*Ibid.*, xxviii. 9-12; xxxix. 6-7). Philo identifies the breastplate as an image of the starry heaven (*De Somn.* I, 3), referring the twelve stones in four rows to the zodiac as divided into quarters for the four seasons (*De Mosc.* III. 12, *De Monarch.* II, 5); and he says the stones were of twelve colors because each zodiac figure "produces the color which is akin to it" (*De Mosc.* III, 12). He also recognizes the two stones of the ephod, each with six names, as emblems of the northern and southern hemispheres of the celestial sphere (*De Monarch.* II, 5; *De Mose.* III, 12, in the latter telling us that some referred the two stones to the sun and moon), and elsewhere he identifies the twelve sons or tribes, in two groups of six each, as "a representation and imitation of the circle of the zodiac" which comprises six northern and six southern signs (*De Praem.* 11). Thus, too, Josephus refers the two stones of the ephod to the sun and moon, and the twelve stones of the breastplate to both the signs and the months, recognizing the whole garment of the highpriest as "an imitation and representation of the universe" (*Antiq.* III, 7, 7; cf. Clement of Alexandria, *Strom.* V, 6); and the signs are carved on the breastplate of a statue of Aaron in a church at Genoa, Piazza a Bianci (Wilson, *Lights and Shadows of Northern Mythology*, p. 215). Again, the twelve loaves of shew-bread, in two piles of six each (Lev. xxiv. 5, 6) are recognized by Philo as a memorial of the twelve tribes (*Quis Rer. Divin. Haecrs.* 36), and he also says that their two-fold grouping was in accordance with the division of the year by the equinoxes into two seasons (*De Victim.* 3); and thus Josephus has it that the twice six loaves "signified the circle of the zodiac and the year" (*Bell. Jud.* v. 5, 5). The golden bells on the garment of the priests, unspecified as to number in the Old Testament (Ex. xxviii. 33, etc.), are given as twelve by Justin Martyr, who says they symbolized the Apostles of Jesus (*Tryph.* 42), while Clement of Alexandria puts them at three hundred and sixty as symbolizing the days of the year (*Strom.* V, 6). Solomon divided his kingdom into twelve departments, under as many officers, each supplying the royal household with provisions for a month (1 Kings, iv. 7); David had twelve captains,

one for each month (1 Chron. xxvii. 1-15), and according to Hecataeus of Abdera (frag. 3) as cited by Diodorus (40), Moses divided his people into twelve tribes corresponding to the months of the year.

In Numb. ii., the camp of the twelve tribes is a hollow square, facing the cardinal points, with three tribes on a side and a standard for the leading tribe of each three-fold division (Judah on the east, Reuben on the south, Ephraim on the west and Dan on the north): the same order being followed, with the same standard-bearing tribes for the four divisions, in the straight line of march (*Ibid.*, xiv. 27). According to the *Targum of Pseudo Jonathan* in Numb. ii. 2, each of the divisional standards was of three colors and bore the symbol of a leading tribe—a young lion for Judah, a stag for Reuben (whose symbol was generally a man), a young man (generally a unicorn) for Ephraim, and a basilisk for Dan. Some Rabbinical writers assumed from Numb. ii. 2, that each of the other tribes bore an ensign with a tribal symbol, which was supplied on the suggestion of Gen. xlix. (see *Midrash* on Numb. ii. 2; Jerome Prado, *Comment. in Ezek.* i. 44, etc.): while the Kabbalists fancifully identified the tribes with the zodiac signs, as in the *Zohar* (see Rosenroth, *Kabbala Denudata*, I, pp. 258, 259), other and variant identifications being made by such later writers as Dupuis (*Origine*, pp. 69, 70) and Vallancy (*Collect. de Rebus Hibern.* VI, 9). The hollow square of the tribes corresponds to the conventional square zodiacs of the Hindus and others, and a Kabbalistic plan of the camp with the tribes allotted to the signs is given by Kircher (*Oed. Aegypt.* II, p. 21).

In Ezek. xlvi. 30 sq. is a catalog of the twelve tribes of Israel as allotted to the twelve gates of a visionary (celestial) Jerusalem, considered as four-square with three gates to each of the cardinal points; the same concept of the celestial city reappearing in Revelation xxi. 10 sq., where the older Jewish groundwork has: "and at the gates twelve angels, and names inscribed which are of the twelve tribes of the sons of Israel," while a Christian interpolation adds: "And the wall of the city having twelve foundations, and in them the names of the twelve apostles of the Lamb." These foundations are also adorned with twelve precious stones, like the highpriest's breastplate. In the *Testaments of the Twelve Patriarchs* it is said that they are to arise in the Resurrection, each ruling over his own tribe (*Benj.* 10), and in Matt. xix. 28; Luke xxii. 30, Jesus tells His twelve Apostles that when he shall sit upon "the throne of his glory," they shall sit upon twelve thrones, "judging the twelve tribes

of Israel." In the Epistle of Barnabas (8), the Apostles are twelve in number "in witness of the tribes of Israel"; in Matt. x. 5 sq., Jesus sends forth His twelve to preach among the twelve tribes; according to Hippolytus they were chosen severally from the twelve tribes, and Jesus spoke through each to his own tribe (*Philosophumia* V, 3), while in the *History of the Apostles* by Abdias and the *Gospel of the Twelve Apostles* they are definitely allotted to the twelve tribes, but without much apparent reason. In the *Clementine Recognitions* we find Peter saying that "there is one True Prophet whose words we twelve Apostles preach, for he is the acceptable year of the Lord, having us twelve Apostles as his twelve months" (IV, 35); and in the *Clementine Homilies* the Apostles have "the number of the twelve months of the Sun," while John the Baptist is credited with thirty chief followers, "fulfilling the monthly reckoning of the moon" (II, 23).

All the descendants of Jacob in Egypt, including his twelve sons, were seventy in number (Heb. of Gen. xlv. 27; Ex. i. 5—the Sept. substituting seventy-five, followed by Acts vii. 14); and Moses chose seventy elders to assist him in ruling the twelve tribes during the Exodus (Ex. xxiv. 1, 9; Numb. xi. 16—Heb. and Sept.). The latter group is evidently a mere duplication of the former, the seventy doubtless being a round number for seventy-two, as frequently in the Old Testament—e. g., the duration of the Babylonian Captivity (Jerm. xxv. 11; xxix. 10), the oppression of Tyre (Isa. xxiii. 15, 17), and the allotted term of man's life (Ps. xc. 10).⁵ Philo (*De Mosc.* I, 34) finds types of the Mosaic elders in the seventy palm trees of Elim, and types of the tribes in the twelve

⁵ The typical 72 probably originated in the very ancient division of the year of 360 days into 72 weeks of 5 days each, as presumably suggested by the primitive finger reckoning, with the 5 days referred to the 5 planets by some. All the Mongolian races had the week of 5 days (see Rawlinson's *Herodotus*, II, 7, Append.), which also appears in the Assyrian calendar as the "hant," with 2 "hants" to a decan (*Trans. Soc. Bibl. Archaeol.*, III, pp. 520-529—the 36 decans but not the 72 "hants" being adopted by the Egyptians), and it is possible that Daniel's 70 (as a round number for 72) weeks of years were primarily suggested by the 72 weeks in a year, of 5 days each, although in the Chaldee text the word for "week" means "seven (days)." As the Egyptians associated the 36 decans with as many stars and gods, it is not improbable that others associated the 72 weeks with gods or stars, or both; which perhaps suggested to some ancient writers that there were 72 constellations in all—as in India (Wilford, *As. Res.* X, p. 99), Egypt (Maspero, *Dawn*, p. 205) and Rome (Pliny, *H. N.* II, 41), although ancient astronomers never appear to have enumerated more than 42 (Eratosthenes) or 49 (Ptolemy), while the Babylonians had only 36 (according to Diodorus, II, 30, 31, and R. Brown, *Prim. Constels.*, II, pp. 2-27). In Egyptian mythology, Osiris is slain by 72 conspirators (Plut., *De Isid.* 13); the intercalary 5 days are made of a 72d part of each moon's illumination in the year of 360 days (*loc. cit.*, where Plutarch has a 70th part), and there were 70 days of embalming and mourning for the dead (Rawlinson's *Herodotus*, II, 7, append.).

fountains of the same place (Ex. xv. 27; Numb. xxxiii. 9). Josephus says there were seventy branches to the temple candlestick, which he refers to the (thirty-six) decans, while the lamps are referred to the planets (*Antiq.* III, 7, 7; cf. Philo, *Quis Rer. Divin. Hacres.* 45; *De Mose.* II, 9; Clement Alex., *Strom.* V, 6). The Septuagint translation was made by seventy-two men, six from each tribe, in seventy-two days (Pseudo-Aristeas; Philo, *De Mose.* III, 2; Josephus, *Antiq.* XII, 2, 10 and 12, etc. Epiphanius, *De Pond. et Mens.* 3-6, says that the translators were divided into couples, in thirty-six cells). There were seventy-two members of the Jewish sanhedrin, and Confucius is said to have had seventy-two initiated disciples among his thousands of followers (Matter, *Gnostics*, II, p. 83. For other groups of seventy-two in later times, see Higgins, *Anacalypsis*, I, pp. 411, 420, 780, 782, 789).

The seventy (for seventy-two) descendants of Jacob or the Mosaic elders, or both, doubtless suggested the seventy or seventy-two disciples chosen by Jesus in addition to the twelve Apostles and sent forth only to Israel Luke x. 1, 17; the Greek MSS differing as to whether they were seventy or seventy-two, and the Latin Vulgate having "seventy-two"). Indeed, according to the *Clementine Recognitions*, these twelve Apostles and seventy-two disciples were chosen after the pattern of the twelve tribes and the seventy-two elders of Moses (i. 40; cf. Tertullian, *Adv. Marc.* IV, 13; everything done by Jesus in accordance with preceding types; the Apostles typified by the gems on the high priest's breastplate, the stones set up by Joshua and the fountains at Elisha). Some of the ancient astrologers held that the habitable world was divided among seventy-two nations, or races of men, with as many languages, as do the writer of the *Clementine Recognitions* (II, 42) and Hippolytus (*Philosophumia*, X, 26—where the number of the nations is said to correspond to that of the descendants of Jacob); and Rabbinical writers found seventy nations in the seventy descendants or races of Noah's three sons (Heb. of Gen. x., where the Sept. has seventy-two by the addition of Cainan and Elishah; cf. Clement Alex., *Strom.* I, 21, "According to the true reckoning, there appear to be seventy-two generic dialects, as our Scriptures hand down"). Thus it appears that the seventy-two disciples of Jesus should have been sent forth to all the nations (rather than to the Israelites only, as in Luke), while the twelve Apostles were sent only to the twelve tribes (as in Matt. x. 5—"to the lost sheep of the house of Israel," wanting in the only parallel, Mark iii. 14). At the beginning of the Christian era, the ancient territory of the twelve tribes may well

have been identified with the twelve toparchies, including Perea and Galilæa, into which Judæa was divided by the Romans (see Pliny, *H. N.*, V. 15). But the twelve tribes were generally held to be dispersed among the Gentiles (John vii. 35; James i. 1, etc.), which necessitated the sending of the Apostles into the Gentile countries; the regions where they preached being variously named in later traditions. According to the Gnostic Marcus, the whole earth was divided into twelve regions (in Hippolytus, *Philosophumia*, VI, 48).

In Luke, as above cited, the seventy-two disciples are additional to the twelve Apostles or chief disciples, thus giving in all eighty-four disciples, who were probably conceived by some to form twelve groups of seven each, with an Apostle at the head of each group—the whole number of disciples thus corresponding to the twelve zodiac signs, each with six paranatellons, as represented in the *Vishnu Purana* by twelve times seven celestial beings, each group of seven connected with a month (II, 10). This concept was perhaps suggested by the seven “deacons” of Acts vi., including Philip as originally the Apostle of the same name (see below); while the extant catalogs of the seventy (for seventy-two) “deacons” include the Apostles Thaddæus and Matthias, and Jacob the brother of Jesus, with whom the Apostle Jacob was originally identical. Eusebius tells us that no catalog of the seventy disciples existed in his time, but that they were said to include Cephus (=Peter), Matthias and Thaddæus—three of the Apostles (*H. E.*, I, 12. For the extant names of the seventy “deacons” see Hippolytus *On the Twelve Apostles* and *Pseudo-Dorotheus*; cf. Eusebius, *H. E.*, I, 13, for the early Syriac identification of the Apostle Thaddæus as one of the seventy “deacons”).⁶

⁶ The 12 signs and 72 paranatellons suggest 84 divisions of the celestial sphere; whence doubtless the Buddhists put the whole number of the stars at 84,000 (with 1,000 to each division of the sphere), while some assigned as many (stellar) wives to the (cosmic) Buddha. (For the 84 and 84,000 in Buddhism, see Burnouf, *Int. a l'hist. du Budd.*, pp. 370, 381; Lillie, *Pop. Life Budd.*, p. 46.) Gautama Buddha is said to have sent forth sixty disciples from Benares, two by two (*Burmese, Life of Buddha*, Bigandet, p. 126), and this groups is doubtless to be taken in connection with twelve chief disciples to make a group of seventy-two—as probably suggested by the Christian account.

BOOK REVIEW

PSYCHOLOGY AND POLITICS; AND CONFLICT AND DREAM. Two volumes. By *W. H. R. Rivers, LL.D., F.R.S.* New York: Harcourt Brace & Co.

These two volumes appear simultaneously in The International Library of Psychology, Philosophy and Scientific Method, and are in effect a memorial to their author, who died suddenly in July, 1922. The manuscript for the volume on Dreams had been revised by him and was nearly ready for the press. The volume on Politics existed in the form of lectures, six in number, the book taking its title from the leading lecture. This address grew out of his candidacy for the House of Commons in the early part of 1922. He was a professor at Cambridge, and had won distinction in surgery, as well as psychology. During the war, he was at the military hospital at Maghull, and there gathered no small part of the material for his book on Dreams. This experience led him to the investigation of his own dreams, and these he discusses with pleasing frankness.

In the matter of Dreams, he is in fundamental agreement with Freud, so far as admitting that dreams have a serious meaning and a bearing upon practical life: he does not agree, however, that a dream is always the expression of a wish. All in all, his work is a corrective of some of the extravagances of the followers of Freud. It is sane, frank and non-technical.

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The practice of eating a god in the form of first-fruits or of a divine animal originated in ancient times, and attained an extraordinary development in the Mystery Religions of the Greeks, in the cults of Attis, of Adonis, of Osiris, of Dionysus, of Demeter, and of other Saviour Gods. From these cults the idea was borrowed by Paul and, against opposition of the Jewish Christians, fastened on the church. The history of the dogma, after the first centuries of our era, has been the story of attempts to explain it. Transubstantiation and the doctrine of the sacrifice of the mass were not, as commonly by Protestants and rationalists they are said to be, the inept inventions of a barbarous age, but were the first endeavors to reason about and philosophically to elucidate beliefs formerly accepted with naïve simplicity. The hardest battles over the dogma came in the Reformation period, which accordingly bulks large in the present work. While Luther, Calvin, and other prominent Reformers believed in a real presence, but tried to give its mode new explanations, other more advanced spirits, Honius, Carlstadt, Swingli, Tyndale, and their fellows, adopted the view, now prevalent in Protestant communions, that the eucharistic bread and wine were mere symbols. After the heat of the sixteenth-century controversies, Zwinglian or rationalist views were quietly adopted by most Christians, though here and there high sacramentalism survived or was revived.

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